THE PROCEDURE OF THE HOUSE OF COMMONS

A Study of its History and Present Form

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BOOK II

MODERN PROCEDURE

PART I

Authorities and Literature

BEFORE proceeding to discuss the details of the procedure of the House of Commons as it exists at the present day, some information should be given as to the authorities and literature which have been consulted in preparing the present work. The authorities fall into two groups, distinguished by a difference in the legal character of their contents : the first comprises the sources of the customary law, the second the express enactments as to the order of business. Having regard to the historical account given in Book I, it is unnecessary to spend time in explaining that the former is, to this day, the foundation of the whole. It will be well, however, to begin by discussing, in some preliminary remarks, the relation between the two classes of authorities, and to show how express standards of procedure have been formed.

CHAPTER I

Lex et Consuetudo Parliamenti

THE House of Commons has never known an "order of business" such as modern Continental parliaments possess, nor has it at the present day any code by reference to which all questions of procedure have to be decided. Such of the regulations for carrying on its business as have been formulated must be regarded as grafted upon the historic uncodified arrangements developed by custom. Neither the civil nor the constitutional law of England has ever been reduced to a code, though for hundreds of years there have been, in the statutes, innumerable special enactments ; so,

too, there has never been any comprehensive legislation dealing with the procedure of Parliament as a whole. Again, to our own day, common law and equity, the unformulated law,[1] are inexhaustible sources from which the civil law of England is nourished, the former also containing the main roots of the constitution of the state: in like manner the modern provisions for the conduct of business in Parliament, welded together into a collection of rules, rest on the broad basis of the unwritten law, produced by centuries of usage in the two Houses. Sir Edward Coke saw this clearly when he said, "As every court of justice hath laws and customs for its direction, some the civil and canon, some the common law, others their own peculiar laws and customs, so the High Court of Parliament hath also its own peculiar law, called the *lex et consuetudo parliamenti*."[2]

Custom, then, was the original source of the internal law of Parliament, and, till the middle of the nineteenth century, contributed more to its development than anything else. Now the custom of Parliament, as Coke goes on to tell us, is best learnt out of the Rolls of Parliament and other records, by precedents and continual experience. It is the basis upon which, as our historical account has shown, the most ancient and fundamental institutions of parliamentary procedure rest; this is true whether we consider the institutions peculiar to each House separately, or those which concern their communications and legal relations one to the other and to the Crown: the whole law of parliamentary privilege is derived from it.[3] Even now a large proportion of the edifice of procedure stands simply upon precedents. As in civil and criminal law precedents are the rock out of which the common law is quarried, so do they form for Parlia-

[1] The expression "unformulated law" is more correct than "unwritten law." Though it may be accurate enough to say that the common law lives from generation to generation "in the bosom of the judges," and is there developed, it is written down in the practically continuous series of Year Books and Reports, which cover the whole of the last 600 years; though not in the form of statute law, it is written case law.

[2] *Coke*, Fourth Institute, p. 14.

[3] On this point May has the striking remark that "whatever the Parliament has constantly declared to be a privilege, is the sole evidence of its being part of the ancient law of Parliament." ("Parliamentary Practice," p. 62.)

ment the source of the *consuetudo parliamentaria*. The customary law is ascertained and made available for the decision of a new concrete case by searching, in the journals officially kept by the Clerk, for analogous particular cases, investigating their significance and adopting them as guides. It has, therefore, frequently been found convenient to appoint special committees to make such investigations. In more recent times, with the widening of the Speaker's jurisdiction, it has been in the first instance his task, when disputes on points of order or similar difficulties have arisen, to give his decision with as much respect to precedents as possible. Compilations of such rulings from the chair (the form in which precedents make their appearance in modern times), and findings of committees would clearly be of the greatest practical assistance both to the Speaker and the House, and consequently "Collections of parliamentary precedents" have often been published even in recent days, and are convenient instruments kept by the Clerk of the House in readiness for the Speaker and Chairman.

The journals are by no means the only authentic sources of information as to what has been established by custom. A large part of what concerns procedure is never recorded in them; for not unfrequently usages have been formed and long observed without giving rise to any definite decision of the House or the Speaker, which would constitute a precedent. Long-continued practice, moreover, is not always required for the creation of customs in procedure. In all such cases the only proof of a customary rule is the actual practice adopted, it being, of course, always in the last resort a matter purely for the decision of the House itself whether it accepts its custom as binding or not.

But by the side of this source of law, flowing from old traditions, there arose comparatively early the *lex parliamentaria*, by which we understand the aggregate of the definite express decisions given by one or other of the Houses as to the arrangement of its business, together with the orders arising therefrom. The word *order* is used in two senses: it may mean a concrete direction as to what is to be done in a particular case or it may describe an abstract formulation of a rule as to the business of the

House. In the first sense an order is the commonest act of the House, the motive power of all its actual positive work. We have nothing to do with orders of the House in this sense: we are only concerned with orders which are abstract regulations.

The mark which distinguishes orders of the second kind is their laying down general rules which are conceived as more or less permanent. Such orders, each of which is at first quite independent and revocable at any moment, after the ground they cover has reached a certain extent, constitute a connected body of formulated law upon matters of procedure. As we have already seen, from the beginning of the seventeenth century the House of Commons has shown considerable activity in this kind of autonomous legislation. In the course of time the constant repetition of certain well-tried orders, as opposed to special, temporary regulations, has led to the recognition of *standing orders* as a separate class of rules. Standing orders are regulations which have been expressly declared to be intended to bind all future parliaments, although the right is reserved of repealing them at any future time by a simple decision of the House. Until, however, such an express decision is come to, the House as a whole and the Chair and every individual member are bound just as firmly by the terms of the orders as ordinary citizens are bound by an act of parliament.

In addition to the standing orders a second category of procedure rules known as *sessional orders* has grown up. These comprise regulations which the House expressly renews at the beginning of each session, making the principles contained in them binding for the duration of its currency. The number of sessional orders has never been large, and several of them by constant repetition, session after session, have practically become standing orders.[1] There are also

[1] At present there are nine sessional orders in force dealing with the following matters:—(1) double election returns; (2) exclusion of peers from voting; (3) prohibition against interference of peers in elections; (4) bribery at elections; (5) tampering with witnesses; (6) false evidence given to the House or one of its committees; (7) direction to the police to keep the passages to the House clear; (8) regulations as to printing the "votes and proceedings"; (9) regulations as to printing the journal. As will be seen,

a number of rules not belonging to either of the foregoing classes, never expressly endowed with either short or long duration, which by virtue of continuous practice, have acquired the force of customary law. For more than fifty years it has been usual for the procedure regulations and forms of all three kinds to be collected from time to time in a handbook under the editorship of the Clerk of the House for the time being; it is laid by the Speaker on the table of the House, and may, therefore, be regarded as an official statement.

All the forms enumerated above plainly reflect the autonomy of the House of Commons in matters of procedure, and, of course, similar powers of self-government are exercised by the House of Lords.[1] There are also, though to a very inconsiderable degree, and so to speak in a rudimentary condition, an element of legislation and an element of prerogative in the procedure of Parliament. The first consists in the regulation by act of parliament of certain institutions (for example, the appointment of a Deputy Speaker and certain privileges of the Speaker himself).[2] The operation of the royal prerogative is exclusively confined to the opening, prorogation and dissolution of Parliament. In its exercise lies the counterpart to the privileges of the two Houses, as it rests upon the immemorial practice of the peculiar rights of the Crown in relation to Parliament. With the order of business proper neither legislation nor prerogative has the least concern.

The binding force of the standing and sessional orders depends on the desire of the House to keep its procedure in accord with the decisions to which it has already come. Consequently to annul this force there should be required, in principle, some *actus contrarius*, some express declaration of an opposite intention. The House, however, possesses another

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the four first have no connection with the order of business. For the text of the sessional orders see Appendix.

[1] Blackstone, quoting Coke, puts this autonomy strongly, "Whatever matter arises concerning either house of parliament ought to be discussed and adjudged in that house to which it relates, and not elsewhere." (*Coke*, Fourth Institute, p. 15; *Blackstone*, vol. i., p. 163.)

[2] See *infra*, Part vi., chap. ii., for the enumeration of the special functions of the Speaker.

resource whereby it can free itself, in particular cases, from the self-imposed barriers and fetters of its standing orders. It can do so by the process of *suspending* the standing orders. It is competent, under the existing rules, for the House to be invited by a simple motion to set aside, with respect to some special business, certain standing orders which affect it, or, if need be, the whole of the standing orders ; in other words, to suspend their action for a particular case without prejudice to their continued validity. By usage a motion for such temporary suspension requires previous notice ; but in urgent cases the House has even dispensed with this requirement. Still further, the House has an indirect method of suspension, not dependent on previous notice ; it may make a concrete order prescribing a course of procedure inconsistent with the standing orders, and thus by implication cancel their operation upon a particular occasion.[1]

From the foregoing we may draw an important conclusion. In the House of Commons there are no special rules applicable to proposals for reform in procedure. Any particular change in existing rules takes effect by force of a simple resolution ; no second resolution is required except for the purpose of raising a new regulation to the status of a standing order with permanent validity. Neither the notice of an intention to move a resolution affecting procedure nor any other requisite for its passing is hedged in with special technical formalities. A simple majority is all that is required, and there is no discussion in committee. Technicalities have never thrown any difficulty in the way of the Government's introducing and carrying their proposals for alterations in procedure, even, as we have seen, at the time of the bitterest obstruction. The possibility of securing, by simple motion and order, that any subject may have priority in the arrangement of the business of the House has always given matters of procedure amendment a chance of immediate and unimpeded decision. This principle, which has never been infringed from the first, and the consequent facility of change, at any moment and with convenient speed, have

[1] See *May*, "Parliamentary Practice," p. 148. An example may be found in the sitting of the 1st of May, 1891 ; *Hansard* (352), 1854.

always been characteristic features in English parliamentary procedure : they have contributed in no small measure to the elasticity of the whole internal parliamentary system, which has repeatedly helped it to pass with success through political crises both within and without the walls of the House.

CHAPTER II

Original Authorities and Literature on the Order of Business

THE list of books given is by no means exhaustive; for instance, not a few popular works upon Parliament have been intentionally omitted.

In what follows a distinction has been drawn, for the sake of greater clearness, between the original authorities on the order of business in the strict sense, and other literature. In the first group are included not only the official documents of parliamentary law, but also those printed papers and publications which principally consist of, or are based on, official materials.

I—Original Authorities on the Order of Business

1. *Rotuli Parliamentorum* (Rolls of Parliament), 1278–1503, 6 vols., 1783. Index, 1832.

This is the great collection of the documents of the mediæval parliaments, published in pursuance of an order of the House of Lords of the 9th of March 1767. It is a monumental work, and constitutes the main source for the history of England during the middle ages, especially for that of Parliament.

2. A supplement to the above is *Professor F. W. Maitland's* edition of the Roll of Parliament for 1305 in the Rolls series, under the title *Memoranda de Parliamento*, 1305; London, 1893.

3. *Select Charters* illustrative of English constitutional history, edited by *W. Stubbs*, 8th edition; Oxford, 1900.

4. *House of Commons Journals*, 1547–1903, vols. i.–clxviii.

The first printed volume (1547–1629) contains frequent entries of the debates; for some sessions there are several, not always consistent, reports. In the later volumes the minuteness with which the actual proceedings and decisions are recorded continually increases, but all reference to speakers and the course of the debates is carefully avoided. On the other hand, till the middle of the eighteenth century reports from committees and bills are sometimes appended. As to the present mode of editing the journals

see *infra*, pp. 47, 48, and the examples in the Appendix. The series of journals is, of course, one of the main authorities both for the explanation of the existing procedure and for its history. The earlier books on parliamentary procedure are mainly compilations of extracts from them. Their serviceableness is materially enhanced by the excellent indexes which were added during the nineteenth century, and which cover the whole period from 1547. Of special value for the study of the historic order of business is the first volume of the "General Index to the Journal of the House of Commons," for the period 1547–1714, drawn up by Thomas Vardon and Thomas Erskine May, 1852.

5. Standing Orders of the House of Commons for public business.

The Standing Orders have been published, under the direction of the House of Commons, at intervals from the year 1811. During the last thirty years, in consequence of the numerous alterations in the rules, a new edition has been published nearly every session. I have chiefly made use of the following, of which I possess copies:—

(*a*) Standing Orders of the House of Commons relative to private bills and other matters: 20th June 1810;[1] No. 355.

(*b*) Standing Orders of the House of Commons, 1685–1848: 31st July 1848; No. 571.

(*c*) Standing Orders of the House of Commons, 1860: 25th August 1860; No. 586.

(*d*) Standing Orders of the House of Commons—Part I. Public business; Part II. Private business: 2nd August 1900; No. 314.

(*e*) Standing Orders of the House of Commons: 1st December 1902; No. 386.

In all of these editions by far the greater part refers to private business.

6. *Manual of Procedure* in the public business of the House of Commons, prepared by the Clerk of the House for the use of members and laid on the table by Mr. Speaker.

This is the official handbook presented by the Speaker to the House. In the 1904 edition, with the index and an appendix, comprising the standing orders relative to public business and the sessional orders, it makes a little octavo book of 350 pages. It contains a systematically arranged account of the forms of procedure, compiled in the main by the help of Sir Erskine May's work. I have been able to use not only the older edition, prepared by Sir Reginald Palgrave, but also the new edition (1904) by the present Clerk of the House, Sir Courtenay Ilbert, in which the old text has been completely revised, and which contains much valuable new matter.

[1] The dates given for this and other parliamentary papers are the dates upon which they were respectively ordered to be printed.

7. The following reports and minutes of evidence are of the highest importance for the history of the order of business during the nineteenth century. They comprise the proceedings of the various committees of investigation appointed since 1832 to consider the procedure of the House of Commons, together with one or two reports from joint committees of the two Houses.

(*a*) Report from the select committee on the public and private business of the House: 13th July 1837; No. 517.

(*b*) Report from the select committee on the public and private business of the House, together with the minutes of evidence and index: 14th August 1848; No. 644.

(*c*) Report from the select committee on the public and private business of the House, together with the minutes of evidence and index: 3rd May 1854; No. 212.

(*d*) Report from the select committee on the public and private business of the House, together with the minutes of evidence and index: 19th April 1861; No. 173.

(*e*) Report from the select committee of the House of Lords (as to promoting the despatch of public business), together with the minutes of evidence and index: 10th June 1861; No. 321.

(*f*) Report from the joint committee of the House of Lords and House of Commons on the despatch of business in Parliament (minutes of evidence): 2nd August 1869; No. 386.

(*g*) Report from the select committee on the business of the House (minutes of evidence): 28th March 1871; No. 171.

(*h*) Report from the select committee on the business of the House (minutes of evidence): 8th July 1878; No. 268 (with index).

(*i*) Report from the select committee on parliamentary procedure: 10th June 1886; No. 186.

(*j*) Report from the select committee on the business of the House: 14th July 1890; No. 298.[1]

8. Further reports to the House of Commons which are of importance on points of procedure are the following:—

(*a*) Third report from the select committee on committee rooms and printed papers: 1st July 1825; No. 516.

(*b*) Report from the select committee on printing done for the House (minutes of evidence): 10th July 1828; No. 520.

(*c*) First and second reports from the select committee on public documents (minutes of evidence): 1st March 1833, 23rd August 1833; Nos. 44, 717.

(*d*) First, second, and third reports from the select committee on printed papers (minutes of evidence): 20th March 1835, 16th July 1835, 7th September 1835; Nos. 61, 392, 606.

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[1] To these should now be added:—First and second reports from the select committee on House of Commons procedure: 22nd March 1906, 25th May 1906; Nos. 89, 181.

(*e*) Report from the select committee on publication of printed papers: 8th May 1837; No. 286.

(*f*) Report from the select committee on the losses of the late Speaker and officers of the House by fire of the Houses of Parliament: 10th July 1837; No. 493.

(*g*) First report from the select committee on private business: 7th February 1840; No. 56.

(*h*) First report from the select committee on the publication of printed papers by order of the House of Commons: 18th March 1840; No. 130.

(*i*) First and second reports from the select committee on printing (minutes of evidence): 16th August 1848, 29th August 1848: Nos. 657, 710.

(*j*) Report from the select committee on the office of the Speaker: 12th May 1853; No. 478.

(*k*) Report from the select committee on private bill legislation: 24th June 1863; No. 385.

(*l*) Report from the select committee on parliamentary reporting (minutes of evidence): 31st July 1878; No. 327.

(*m*) Report from the select committee on parliamentary reporting (minutes of evidence): 23rd May 1879; No. 203.

(*n*) Report from the select committee on House of Commons (admission of strangers) (minutes of evidence): 30th April 1888; No. 132.

(*o*) Report from the joint committee of the House of Lords and the House of Commons appointed to examine into the present state of private bill legislation: 12th July 1888; No. 208: Index to same, No. 276.

(*p*) Report from the select committee on estimates procedure (grants of supply) (minutes of evidence): 13th July 1888; No. 281.

(*q*) Report from the joint committee of the House of Lords and the House of Commons on the Houses of Lords and Commons permanent staff: 20th July 1899; No. 286.

(*r*) Report from the select committee on private business: 21st November 1902; No. 378.

(*s*) Report from the select committee on national expenditure (minutes of evidence): 4th December 1902; No. 387.

(*t*) Report from the select committee on national expenditure (minutes of evidence): 7th July 1903; No. 242.

9. The various collections and editions of debates in the House of Commons, including (amongst others) :—

(*a*) *D'Ewes, Sir Simonds*, Journals of all the parliaments during the reign of Queen Elizabeth both of the House of Lords and House of Commons; London, 1682.

(*b*) *Parry, Charles Henry*, The Parliaments and Councils of England chronologically arranged from the reign of William I to the Revolution in 1688; London, 1839.

(*c*) Debates of the House of Commons in 1625, edited by *Samuel Rawson Gardiner*; Camden Society, 1873.

(*d*) *Verney Papers*, Notes of proceedings in the Long Parliament; Camden Society, 1845.

(*e*) *Grey, A.*, Debates of the House of Commons from 1667 to 1694. 10 vols.

(*f*) *Rushworth, John*, Historical Collections; London, 1659. 6 vols.

(*g*) *Cobbett, W.*, Parliamentary history of England from the Norman Conquest to the year 1803: 1806–1820; 36 vols. A continuation of this is

(*h*) *Hansard, T. C.*, The parliamentary debates from 1803. Series I to III, 1803–1891; 41 + 25 + 356 volumes. From this date onwards *Parliamentary Debates;* authorised edition, Series IV.

II—Literature relating to Parliamentary Procedure

(A) *Exclusively concerned with Procedure*

1. "*Arcana Parliamentaria*, or Precedents concerning, &c. Parliament." By R. C., of the Middle Temple. London, 1685.

2. *Blackstone*, "Commentaries on the Laws of England." Kerr's edition, 1876. 4 vols.

3. *Bourke*, "Parliamentary Precedents, being decisions of the Right Hon. Speaker Charles Shaw Lefevre." London, 1857.

4. *Clifford*, "History of Private Bill Legislation." 2 vols. London, 1887.

5. *Cohen, Dr. Gottfried*, "Grundzüge der englischen Verfassung mit besonderer Rücksicht auf das Parlament" (1 and 2, Neue Jahrbücher der Geschichte und Politik). Published by Pölitz, 1847.

6. *Cohen, Dr. Gottfried*, "Die Verfassung und Geschäftsordnung des englischen Parlaments mit Hinweis auf die Geschäftsordnungen deutscher Kammern." Hamburg, 1861.

7. *Coke, Ed.*, the fourth part of the "Institutes of the Laws of England." London, 1797.

8. *Ellis, Chas. Thos.*, "Practical Remarks and Precedents of Proceedings in Parliament." London, 1802.

9. *Elsynge, Henry*, "The Manner of Holding Parliaments in England." London, 1768. (First edition, 1660.)

10. (A) *Hakewel, W.*, "Modus tenendi parliamentum, or the old manner of holding Parliaments in England, together with some privileges of Parliament; the manner and method

how laws are there enacted by passing of bills." London, 1671.

(B) *H.S.E.C.P.* (Henry Scobell, Esq., Cler. Parl.), "Memorials of the Method and Manner of Proceedings in Parliament in passing Bills." 1670.

These two works are often bound together as one book.

11. *Halcomb, John,* "A Practical Treatise of passing Private Bills." London, 1836.

12. *Hale* (*Lord Chief Justice*), "The Jurisdiction of the Lords' House or Parliament." London, 1796.

13. *Hales* (*Judge*), "The Original Institution, Power, and Jurisdiction of Parliaments." London, 1707.

14. *Hatsell, John,* "Precedents of Proceedings in the House of Commons under separate titles, with observations." Vols. i.–iv. London, 3rd edition, 1796; 4th edition, 1818.

15. *Hooker's* account of the method of proceeding in Parliament; in *Lord Mountmorres,* "The History of the Principal Transactions of the Irish Parliament from 1634 to 1666." 2 vols. London, 1792.

16. *Jefferson, T.,* "Manual of Parliamentary Practice for the use of the Senate of the United States." Washington, 1801. (Included in vol. ix. of his complete works, 1854.)

This book, by the celebrated American statesman, is to the present day regarded as the foundation of both the theory and the practice of the procedure in the American Congress. Jefferson, in the introduction, expresses his view that the Senate of the United States should arrange its procedure, in the first place, upon the basis of its own decisions and on American practice, and, subject to this, should rely upon the principles of English procedure; for, as he says, "this is the model that we have studied." The book has been frequently republished. In its earliest editions it has the merit of showing how English procedure at the beginning of the nineteenth century presented itself to an experienced American observer.

17. "*Lex parliamentaria,* or a Treatise of the Law and Custom of Parliament." 2nd edition. London (undated).

18. *May, Sir Thomas Erskine,* "Parliamentary Practice."

Of this standard work on parliamentary procedure eleven editions have been issued. The first appeared in 1844, the second in 1851, the tenth, by Palgrave and Bonham-Carter, in 1893. An eleventh edition, edited by T. L. Webster and W. E. Grey, was published in 1906.

19. *May, Thomas Erskine,* "Remarks and Suggestions with a view to facilitate the Dispatch of Public Business in Parliament." London, 1849.

20. *Mirabeau,* "Réglements observés dans la chambre des Communes pour débattre les matières et pour voter, traduits de l'anglais. Mis en jour par le Comte de Mirabeau." 1789.

The value of this work, irrespective of its great importance in the history of French procedure, lies, for our purpose, in its being a contemporary authority on the procedure of the House of Commons at the end of the eighteenth century. In the introduction Mirabeau makes the following striking remarks: "No English book has given an exact account of the forms of procedure. The account which is here given is not complete, but, so far as it goes, it is authentic. I owe this work, undertaken solely for France, to an Englishman, who, though young, has earned a high reputation, and who is regarded, by those to whom he is well known, as one of the hopes of his country. He is one of those worthy philosophers whose citizenship is not limited to Great Britain" (p. iv). The author of this interesting work, who receives so handsome a testimonial, was none other than Jeremy Bentham, whose creative influence upon French parliamentary procedure is thus evidenced. Mirabeau adds (p. v) that the author had shown his work to several members of the House of Commons, who, having gone through many parliamentary campaigns, knew all the tactics employed, so that this document might be called classic in its kind.

21. *Modus tenendi parliamentum,* edited by Sir T. Duffus Hardy. London, 1846.

22. *Mohl, Robert v.,* "Geschichte und Literatur der Staatswissenschaften," 1856, vol. ii., Monograph No. ix., "Die Literatur des englischen Staatsrechtes."

23. "Observations, Rules, and Orders collected out of divers journals of the House of Commons." London, 1717.

24. "The Orders, Proceedings, Punishments, and Privileges of the Commons House in England." London, 1641 (reprinted in Harl. Misc., vol. v., pp. 258–267).

25. *Petyt,* "Jus parliamentarium." London, 1739.

26. "Practical Suggestions for the Internal Reform of the House of Commons by a parliamentary secretary." London, 1832.

27. "The Procedure of the House of Commons in relation to the Progress of Legislation." London, 1871.

28. *Smith, Sir T.*, "De Republica Anglorum libri tres."
This appeared first in 1576: the references given are to the Elzevir edition of 1641. A new edition, with notes and introduction by L. Alston was published in 1906 by the Cambridge University Press.

29. *Torrens, W. T. McC.*, "Reform of Procedure in Parliament." London, 1882.

(B) *Literature as to Parliament, its Arrangements and History, Memoirs, &c.*

1. *Ashley, E.*, "The Life and Correspondence of Viscount Palmerston." 2 vols. London, 1879.

2. *Bentham, J.*, Works, edited by John Bowring. Vols. ii. and x. Edinburgh, 1843.

3. *Brayley, E. M.*, and *Britton, J.*, "History of the Ancient Palace and late Houses of Parliament at Westminster." London, 1836.

4. *Colchester, Lord* (Charles Abbot, Speaker of the House of Commons, 1802–1817), "Diary and Correspondence." 2 vols. London, 1861.

5. *Denison, J. E.*, "Notes from my Journal when Speaker of the House of Commons." London, 1900.

6. *Fitzgerald, P.*, "The Life and Times of John Wilkes, M.P." 2 vols. London, 1888.

7. *Follett, M.P.*, "The Speaker of the House of Representatives." New York, 1896.

8. *Forster, John*, "Sir John Eliot." 2 vols. London, 1864.

9. *Ilbert, Sir Courtenay*, "Legislative Methods and Forms." Oxford, 1901.

10. *Jennings, G. H.*, "Anecdotal History of the British Parliament from the Earliest Periods." London, 1899.

11. *Lummis, E.*, "The Speaker's Chair." London, 1900.

12. *MacDonagh, Michael*, "The Book of Parliament." London, 1897.

13. *MacDonagh, Michael*, "Parliament: its Romance, its Comedy, its Pathos." London, 1902.

14. *Moritz, Carl Philipp*, "Reisen eines Deutschen in England im Jahre 1782." New edition. Berlin, 1903.
Often republished in an English translation.

15. *Mowbray, Sir John,* "Seventy Years at Westminster." Edinburgh and London, 1900.

16. *O'Brien, Barry,* "Life of Charles Stewart Parnell." 2 vols. London, 1898.

17. *Onslow* Papers in Historical MSS. Commission Report, vol. xiv., appendix ix., 1895.

18. *Palgrave, Reginald,* "The House of Commons; Illustrations of its History and Practice." New and revised edition. London, 1878.

19. *Pellew, G.,* "Life and Correspondence of the Right Hon. Henry Addington, First Viscount Sidmouth." 3 vols. London, 1847.

20. *Pike, L. O.,* "Constitutional History of the House of Lords." London, 1894.

21. *Porritt, Edward,* "The Unreformed House of Commons." 2 vols. Cambridge, 1903.

22. *Temple, Sir Richard,* "Life in Parliament, 1886–1892." London, 1893.

23. *Temple, Sir Richard,* "The House of Commons." London, 1899.

24. *Townsend, W. C.,* "History of the House of Commons from 1688 to 1832." 2 vols. London, 1843.

25. *White, William,* "The Inner Life of the House of Commons," edited by Justin McCarthy. 2 vols. London, 1904.

(C) *English History, the Constitution of Parliament, and Politics*

1. *Annual Register,* 1758–1904.

2. *Anson, Sir W. R.,* "Law and Custom of the Constitution." 2 parts. Part I., 3rd edition. Oxford, 1897. Part II., 2nd edition. Oxford, 1892.

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PART II

The Arrangements of the Building and the Recording of Proceedings

CHAPTER I

The Meeting Place and Arrangement of Seats

IN order fully to understand the procedure of the House of Commons it is necessary to learn the physical conditions under which its proceedings take place, and, above all, to form a picture of the arena, the place of assembly of the Commons.

The edifice in which Parliament meets—the gigantic Palace of Westminster—is reared upon the spot, between the River Thames and Westminster Abbey, where, till the great fire of 1834, had stood the old royal palace of Westminster. The congeries of buildings, some of them very ancient, which went under that name included the S. Stephen's Chapel, where, from 1547, the deliberations of the Commons had regularly been held.[1] The Commons' chamber in the new parliamentary palace was not built in accordance with the original plans of the architect, Sir Charles Barry, but was reduced to the same small dimensions as those which the old assembly room had possessed. This was done of set purpose: the greatest anxiety was shown to adopt such measurements for the hall as would preserve in every detail the historic tradition of the House of Commons. Above all, it was desired to avoid any such material enlarge-

[1] A detailed history of the old palace of Westminster, with full references to authorities, and with the addition of numerous plans and pictures, will be found in the thorough work by *Brayley and Britton*, "History of the Ancient Palace and late Houses of Parliament." The new House of Lords was occupied for the first time in 1847, and the new House of Commons in 1850.

ment of the chamber as would cause a modification in the traditional method of speaking, or put a premium on loud-voiced oratory. Thus the character of an assembly confined within narrow limits of space was preserved, and the resulting style of parliamentary speaking and debate, with its absence of demand for great vocal exertion, was likewise retained. To gain this end it was necessary to cut down the floor space of the House to an area insufficient to accommodate half the total number of members: there are literally not enough seats for all of them, even with the aid of the galleries, which are of considerable breadth, and run along the two sides of the chamber at a moderate height from the floor. The chamber, nevertheless, is quite large enough for the customary attendance, and sometimes when for a special reason an unusually large number of members has been present, chairs have been brought in and placed in the open floor space between the rows of benches, which rise to left and right, and members have sat there as well as in the side galleries.

The accommodation for spectators is confined to the two galleries along the short sides of the rectangle formed by the chamber; the front row of the gallery over the Speaker's chair is reserved for newspaper reporters, and behind them, in a space shut off by a high and massive lattice of brass, is the place for ladies visiting the House. The broad and deep gallery over the entrance into the chamber is assigned to the members of the public who have requested and received admission, special seats being reserved for diplomatists and other distinguished strangers.

The hall of assembly itself lies at the end of a long corridor, leading from the octagonal hall in the middle of the palace, the central lobby; the continuation of the corridor on the other side of the central hall leads directly to the corresponding entrance into the House of Lords. The House, however, in the parliamentary sense of the word, is smaller than the chamber itself. At a few paces from the wall in which the double entrance door is placed there runs across the whole breadth of the chamber an imaginary line, marked where it crosses the open floor space by a strip of oilcloth on the carpet. This is the historic

"bar" of the House in the legal sense, the boundary between the House of Commons and the profane outer world. Outside the House in the technical sense there are a few seats parallel to the short sides of the chamber. These are places "in the House" but not "of the House." They may only be occupied by members, but no speech may be made from them, and members who have not yet been sworn, though forbidden to take their seats within the bar, may sit on these "cross benches." Behind them, and separated from them only by a railing of no great height, is a bench which is not regarded as "within the House," and which is accessible, by special permission, to strangers: the back bench on the Speaker's right hand is the place for such permanent officials as may be in attendance to give assistance and information to ministers; the spectator of the proceedings of the House may see in this a symbol of the subordination of the English Civil Service to the sovereignty of Parliament. These seats are currently said to be "under the gallery."[1]

The "floor of the House"—the unoccupied ground space—runs between the rows of benches on the two sides up to the table of the House, which stands directly before the Speaker's chair. Just inside the bar, in the space otherwise left free for members to move about in, stands, to the right hand as one enters, the chair provided for the Serjeant-at-arms or his deputy. From the floor of the House there rise, at a moderate slope, to left and right, five rows of seats. According to a tradition now more than a hundred years old, the seats which lie to the Speaker's right (and therefore to the left when looked at from the entrance) are occupied by the Government party, the "ins," and those on the other side by the Opposition, the "outs." When the majority changes there is a corresponding migration of parties from one side of the House to the other. Only the Irish party refuses to recognise this arrangement: since it became, under

[1] The back bench "under the gallery" on the Government side has recently (1906) been taken into the House, and the last bench behind the Speaker's chair on the same side has been railed off and made into the place for accommodating the permanent officials who are present.

Parnell's leadership, an irreconcilable Nationalist party, it has always sat upon the Opposition benches, to the Speaker's left, even when, as in 1893, for instance, it has been supporting the Government.[1] A narrow passage divides into two equal parts the two long sides of the room, and the five rows of seats parallel to them; there are also two small passages on each side leading to the side exits which give access to the inner lobbies. The front benches on both sides have a special significance, particularly those halves which, looking at them from the entrance, lie beyond the central passage just mentioned, the "gangway." The front bench on the Government side—which has long been known as the "Treasury bench"—is occupied by the Ministry of the day, and opposite to them upon the other front bench sit such of the members of the last Government as belong to the House of Commons. No fixed order of seats upon the two front benches is prescribed, ministers and ex-ministers (as the case may be) taking whatever places they find convenient without regard to order of precedence. Opposite to the Prime Minister sits the recognised leader of the Opposition, usually the Prime Minister in the last Government, unless he was a peer. The two front benches, therefore, contain the champions for the time being of the two great parties. "Front bench policy" is an expression signifying the official policy of the two great political armies, and is often used in a sarcastic sense by the more independent elements on both sides, especially when, as not infrequently happens, the social homogeneity of the two parties is clearly displayed, or when arrangements or compacts made between the leaders on the two sides interfere with the plans of the advanced Radicals and free-lances.

The division between right and left has long been a characteristic feature of the arrangements in the House of Commons and has made its way thence into the political practice and nomenclature of the whole modern world: but there is another distinction of place, depending upon the construction of the House of Commons, which is but little known outside England. The gangway mentioned above, at

[1] See Supplementary Chapter.

all events so far as the front benches are concerned, is also a political boundary. It is upon the seats of the front bench "below the gangway" (*i.e.*, beyond the gangway, looking from the Speaker's chair) that those members sit who wish to proclaim their independence of the Government or of the front Opposition bench, as the case may be. Thus, for instance, if a minister resigns because he is not in accord with the policy of the Cabinet, he generally takes his seat below the gangway. The old Radical leader, Mr. Labouchere, was for years a well-known figure below the gangway, both while the Liberal party was in power and while it was out of office. The Irish leader for the time being (at present Mr. John Redmond) has always sat below the gangway on the Speaker's left. If a minister or ex-minister refers to the remarks of this or that honourable member below the gangway, it is almost always to be understood that he is defending the Government or official party policy against independent and influential members of his own party.

No acknowledgment of any right to these places has ever been given by a vote of the House. Neither the division into Government and Opposition sides nor the reservation of the Treasury bench for ministers and of the front Opposition bench for ex-ministers is a matter of express parliamentary law. But it may safely be asserted that at all events the tenancy of the front benches has become a fixed customary right by virtue of the constant practice of the nineteenth century, and that if it were seriously contested it would at once be formally confirmed by the House.[1] The difficulty of bringing the House of Commons to recognise any personal rights of this kind is best evidenced by the fact that up to the present time no single

[1] It is well known that in the first reformed House of Commons the Radical Cobbett rudely took possession of the accustomed seat of the leader of the Tory party, Sir Robert Peel, and that this infringement of what had long been the customary arrangement of seats was left by the House without redress. In old days the privileged seat of ministers next to the Speaker was made the subject of criticism, as we may see from a discussion in the House in 1601, in the course of which the Secretary of State, Cecil, said: "If there be any that sits next the door that desires to sit next the chair to give his opinion, I will not only give him my place, but thank him to take my charge. We that sit here take your favours out of courtesy not out of duty." (*D'Ewes*, p. 630.)

member has any right to a definite place in the House. For centuries it has been maintained as an established principle that a member who is present in the House before prayers and takes a seat by placing his hat upon it, or, in recent years, by ticketing it with one of the cards placed upon the table for the purpose, can, if he attends prayers, claim the place for the whole of the sitting, even though he may leave the House for a time, so long as he does not leave the precincts of Westminster Palace.[1] Eminent or veteran members have their habitual places secured to them by universally observed custom.

The table of the house—"a substantial piece of furniture" as Mr. Disraeli once called it in playful reference to the protection it afforded him against Mr. Gladstone's fierce attacks—upon or under which lies the mace which is carried solemnly by the Serjeant-at-arms in front of the Speaker as he goes to his chair, stands between the two front benches and forms as it were a physical fulcrum for the attacks of the Opposition leaders and the replies of the Ministry. At its narrow end, close by the Speaker's chair, sits the Clerk of the House, in wig and gown, and by his side the two Assistant Clerks. On the table among official books and papers stand two solid brassbound boxes which contain the books and forms used for the oath and affirmation, and which often resound under the buffets of ministerial and opposition speakers. Documents presented to the House, such as bills, motions, messages from the Crown, and reports are said to be "laid upon the table," but are not, in fact, placed there.

HISTORICAL NOTE

Complaints as to want of space in the House are very old: the increase in the number of members of Parliament from 334 in the time of Edward VI to 465 at the accession of James I made the inconvenience so much felt that the Speaker issued a special warrant directing an increase of seats (*House of Commons Journals*, vol. i., p. 141). Neither then nor afterwards, however, was anything done to put matters right, so

[1] See Standing Orders 82 and 83, *Manual*, p. 124. One member cannot reserve a seat for another. If there are two sittings on one day the reservation covers both. It is amusing to learn that the Speaker has given a ruling as to hats, namely, that a seat can only be secured by leaving upon it a *bonâ fide* hat, the genuine head covering of the honourable member, a reserve hat being of no use for the purpose.

that in 1832 Cobbett made bitter complaints as to the "cramming" of 658 members into the same insufficient space.[1]

The modern arrangement of places is a result of the formation of parties and party government. In the parliaments of the seventeenth century the division into right and left was quite unknown: but from a well-known parliamentary anecdote it has been inferred that in the first half of the eighteenth century the two great parties sat face to face; it is said that Pulteney, Sir Robert Walpole's bitter opponent, accused the latter of inaccuracy in a Latin quotation, and, throwing a coin across the table, offered to support his opinion by a bet. In another version of the story it is true, Pulteney is said to have been sitting by Walpole and to have whispered the correct quotation to him. Be that as it may, we possess sufficient proof that in this period the local separation of parties had already taken place. Moreover, it stands to reason that the first struggle of many years' duration between well-defined parties—such as was that between Pulteney's coalition and Walpole—would be bound to bring to maturity the need for the parties sitting together in the House. Party splits, which are continually occurring in English history, have always, both in former days and in recent times, caused variations from the strict division into two: for instance, after Mr. Chamberlain's secession from Mr. Gladstone in 1886, he and those who acted with him sat for a considerable time upon the Opposition side of the House, although they supported the Conservative Government.[2]

The custom which assigns to Privy Councillors the part of the front benches near the Speaker is of great antiquity. Hooker states: "Upon the lower row on both sides the Speaker sit such personages as be of the King's privy counsel or of his chief officers."[3] He adds that no other person had any right to a definite place, except the members for the city of London and those for York, who had the ancient privilege of sitting on what is now called the Treasury bench. The privilege of the members for the City of London is acknowledged even now on the first day of each session.

It is noteworthy that knights of the shires, to whom many rights of precedence were given down to the seventeenth century, had, from the sixteenth century, no preference as to seats in the House over simple burgesses.[4]

The present rules as to reserving seats can be shown to reach back to the seventeenth century. A resolution of the 26th of November 1640 provides: "Neither book nor glove may give any man title or interest to any place, if they themselves be not here at prayers."[5] Hatsell, who gives this and later extracts from the journals of the same tenour, states that by old custom members to whom the thanks of the House had been voted had their seats reserved by courtesy. The same privilege has, of course, been accorded to the parliamentary heroes of the House of Commons in the nineteenth century. Hatsell, too, makes the remark that "the mentioning anything upon this subject must appear ridiculous to those who have not been witnesses to many and very serious altercations upon it." ("Precedents," vol. ii., 3rd edition, pp. 86–89; 4th edition, pp. 92–95.)

[1] *Townsend*, "History of the House of Commons," vol. ii., p. 463.
[2] *Temple*, "Life in Parliament," p. 114.
[3] *Mountmorres*, vol. i., p. 114.
[4] *Porritt*, "The Unreformed House of Commons," vol. i., p. 504.
[5] *House of Commons Journals*, vol. ii., p. 36.

CHAPTER II

Publicity of Proceedings and Reports of the Debates

FOR centuries it has been a principle of parliamentary law that the deliberations of the House of Commons are private. This principle, the historical development of which will be traced below, is still accepted as binding, so that, technically, even now, nobody has a right to insist upon the publicity of the debates. The House of Commons, therefore, knows no theoretical distinction between secret and public sittings; they are all *de jure* secret. Either the Speaker or any single member has a right to propose the exclusion of all strangers who may be in the House. Practice, however, has long made the principle inoperative. It has never been formally repudiated, but since 1875 the mere fact of a member's informing the Speaker that he "espies strangers" has not been sufficient, as it had been till then, to cause their immediate expulsion and so to bring about a sitting which is secret *de facto*. The present regulation is that upon the request of a member for the removal of strangers a division is to be taken at once, without debate, and the result of the division is to determine what is to be done. In point of fact nobody now dreams of avoiding publicity; on the contrary, all the members are only too anxious that their speeches and actions should be made known as widely as possible. If any member were to use his right so to move for a secret sitting in order to cause annoyance or as a means of obstruction the House would probably have little hesitation in taking steps to frustrate his intentions. It is, however, not due merely to the conservative feelings of the House that it has never brought itself to the point of asserting the principle of publicity as opposed to its old rule and the many hundreds of years of its existence. The refusal is based also on practical considerations: it is always possible that an

occasion may present itself when the House may wish to deliberate in private.[1]

Admission of strangers to the House of Commons used to be arranged in a somewhat informal way by means of orders given by members: but in 1885, in consequence of Fenian dynamite attempts, a strict supervision was introduced, which is still maintained, though relaxed to a certain extent. Every member is usually able to obtain two orders for admission each day. The distribution of orders is placed in the hands of the Speaker's secretary and the Serjeant-at-arms. Each visitor, before he mounts the stairs leading to the gallery, has to enter his name and address in a book which is provided for the purpose. Foreigners introduced by an ambassador or visitors introduced by one of the Agents-General of the Colonies need no introduction by a member of the House.[2]

Since the recent union of the Speaker's gallery with the strangers' gallery there has been room for about 160 visitors. Order is kept in the halls and corridors of the whole of Westminster Palace by policemen of the London force; in the chamber itself, in the galleries and at the entrance there are special officers of the House and doorkeepers for purposes of supervision.

[1] The present regulations are as follows: — The Serjeant-at-arms attending this House shall, from time to time, take into his custody any stranger whom he may see, or who may be reported to him to be, in any part of the House or gallery appropriated to the members of this House, and also any stranger who, having been admitted into any other part of the House or gallery, shall misconduct himself, or shall not withdraw when strangers are directed to withdraw, while the House, or any committee of the whole House, is sitting; and no person so taken into custody shall be discharged out of custody without the special order of the House (Standing Order 88). No member of this House shall presume to bring any stranger into any part of the House or gallery appropriated to the members of this House, while the House, or a committee of the whole House, is sitting (Standing Order 89). If at any sitting of the House, or in committee, any member shall take notice that strangers are present, Mr. Speaker, or the Chairman (as the case may be) shall forthwith put the question "That strangers be ordered to withdraw" without permitting any debate or amendment: provided that the Speaker, or the Chairman, may, whenever he thinks fit, order the withdrawal of strangers from any part of the House (Standing Order 91).

[2] Report from the select committee on admission of strangers, 30th April 1888 (No. 132); *White*, "Inner Life of the House of Commons," vol. i., pp. xvi *sqq.*

The most regular, and from the point of view of publicity the most important, visitors to the House are, of course, the newspaper reporters. It is they who keep the outer world informed as to what happens in the House, and, above all, as to the words, or at all events the substance, of the speeches made in the debates. These private reporters alone record what is said and done in the House. There is not, and never has been, any official shorthand department to take down the speeches and debates, nor is there, strictly speaking, any official printed report of what is said, though the House, acting by the Government, has long assisted the editors of "Hansard's Debates" by considerable subventions from public money, and has thus, in fact, rendered the continuation of this publication possible.

This arrangement of things, so different to the plans adopted in all other European and American parliaments, has been brought about by the fact that, like the attendance of visitors, all public record of events and speeches in the House has been theoretically prohibited for centuries; indeed, the publication of debates was for a long time most strictly forbidden and punished with great severity. The history of the struggle for publicity in this most important respect will be found described below. Here it is enough to state that, as in the case of the rule against the admission of strangers, the letter of the interdict has never been relaxed, though practice has brought into existence a state of affairs exactly opposite to what the prohibition was intended to secure. The House has never withdrawn the threat, as finally formulated in 1738, of treating and punishing as a breach of privilege any publication of its debates; but, on the other hand, it has not only put up, for more than a century, with the regular communication of its proceedings to the world, but has even given official recognition to the newspaper reporters. The legal status of reporting has, as a matter of fact, been changed from precarious sufferance to formal permission.

From the beginning of the nineteenth century the House itself has recognised the necessity of securing adequate publicity to its proceedings; but for a long time it was content to leave this task to be performed by private undertakings,

the newspapers and the publisher of the "Parliamentary Debates." In 1803, Mr. T. C. Hansard began to compile and publish a report of the debates during the course of the session; his enterprise was a commercial success and he and his firm continued the work, without any public subvention, till 1855. In this year the Treasury subscribed for 100 (increased in 1858 to 120) sets of reports for distribution amongst public departments and libraries. In 1877 a change was made;[1] official support of the undertaking out of public funds began to be given, to the extent at first of £3,000, and afterwards of £4,000; after a time the increase in the number of volumes and the general expenses led to a revision of the amount, and the grant was fixed at £500 for each volume of 960 pages. In 1891 the publishers were changed, the name of Hansard was dropped, and the collection became known simply as the "Parliamentary Debates." The arrangement made at the present day is that shorthand notes of the debates are taken by a staff of reporters in the employment of the firm who have acquired the business of editing and publishing the "Parliamentary Debates." The reports are not *verbatim* reproductions of what is said: as a rule only the speeches of members of the Government, the leaders of the Opposition and certain other prominent parliamentarians are reported word for word. Most of the other speeches are abridged and turned into the third person. A proof of each speech is sent to the member who made it, and such as are returned corrected are distinguished by an asterisk.

The space allotted to reporters, the "Reporters' Gallery" as it is called, is not large; it supplies sitting accommodation for less than sixty persons, the distribution of places being in the hands of the Speaker and the Serjeant-at-arms. After providing for the leading London dailies and a few important provincial papers, there are only a very few seats left for the great news agencies.[2]

[1] Report of select committee on parliamentary reporting (31st July, 1878); Evidence of T. C. Hansard, Minutes of Evidence, Qq. 158–509.

[2] The whole question of reporting was thoroughly investigated by a select committee in 1878 and 1879. The examination of witnesses, and the report based upon it, give a highly interesting description of the whole of the arrangements. The decision arrived at was unfavourable to the

The system just described has been upheld, in spite of many complaints from members of the House, because it supplies all that is practically needed, and is, at the same time, inexpensive. Objections to the abridgment of the speeches come, in England as elsewhere, chiefly from bores and parliamentary stars of the second and third magnitudes. All important speeches are sure of full and accurate reports at the hands of the reporter of the Parliamentary Debates: and these are quite enough to serve the purposes of the public and the future historian.[1]

There is, moreover, another reason of a legal nature which has weighed with the House in its refusal to take part in any official publication of the debates. A direct undertaking of the publishing of debates by the House itself would be inconsistent with the rule, referred to above, by which any such publication is a breach of privilege. Now the House cannot very well allow itself constantly and openly to infringe its own regulations. But the repeal of the prohibition, for the purpose of instituting official reports of the debates, would raise serious issues, as the delicate question of liability at law to third parties for publication of the speeches made would have to be considered. The legal liability of the printer of parliamentary papers and of the person from whom he takes his instructions was expressly asserted by the courts in a famous instance. In the case of parliamentary debates, similar difficulties might arise. The privilege of freedom of speech, the right to immunity before the law in respect of what is spoken in Parliament, protects

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institution of an official shorthand department, the committee considering that: "(*a*) the circumstances of this country are not parallel with those of other countries in which an official report exists; (*b*) a large amount of information as to the proceedings of Parliament is disseminated with great rapidity by the newspapers; (*c*) very few persons outside parliamentary and official circles would care to possess a verbatim report of debates." (Report from the select committee on parliamentary reporting, 23rd May 1879 (No. 203), p. iii.) The evidence throws a good light upon the technical circumstances of English parliamentary reporting at that time. The reports of the committees of 1888 and 1893 will also repay perusal. Another committee has recently had to consider the subject: see Supplementary Chapter.

[1] As to the arrangements for reporting see the chapter "The Reporters' Gallery" in *MacDonagh*, "Book of Parliament," pp. 310–329.

members against any action based on expressions used in addressing the House : *but this protection extends no farther.* It has been decided on several occasions that it does not cover a printed reproduction by a member of a speech he has delivered in Parliament. In a case which occurred more than a hundred years ago, it was held by the Court of King's Bench that a member might have a right to publish his speech, but that the speech must not be made the vehicle of slander against any individual ; if this was done an action for libel would lie for its publication.[1] A similar judgment was pronounced in 1813, in the case of a well-known member of Parliament, Mr. Creevey. On this occasion the House absolutely refused to interfere or to treat the matter as a question of privilege. More recently the principle has been judicially laid down that the reprinting of one speech which reflects upon the character of any person without adding the rest of the debate is not "fair," and is therefore unprotected: no doubt it would be otherwise if the whole debate were given.[2]

Though these decisions may possibly not be considered to define the principle with sufficient accuracy, there can be no doubt, from the whole tendency of English law, as interpreted by the courts, but that under certain circumstances publication of speeches would involve legal liability for libel; the unlimited extension of immunity, as a matter of principle, to the publication of speeches in Parliament would be regarded as a serious attack on legal conceptions which are operative at the present time.[3] There is no practical compulsion to take any such step : there is much to be said against any diminution of the authority of the common law and the regular course of justice in such matters. Without some alteration in the law, which could hardly come about

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[1] Judgment in Lord Abingdon's case, *Rex* v. *Abingdon*, 1795 (1 Espinasse, 226). See *May's* "Parliamentary Practice," p. 100. Lord Abingdon was sentenced to three months' imprisonment and fined £100.

[2] *Wason* v. *Walter* (21st December 1867), L.R., 4 Q.B., 73. For other cases at law and the conclusions to be drawn from them, see *Broom*, "Constitutional Law Viewed in Relation to Common Law," p. 843.

[3] See the statement of Speaker Brand before the select committee on parliamentary reporting, 1878, Minutes of Evidence, Qq. 1682–1688, 1732, 1733.

except by act of parliament, it might well happen that publication of debates by the House might lead to severe conflicts between the Commons and the courts of law, such as occurred over the publication of parliamentary papers.[1] Nothing is more dreaded on all sides than such a conflict of jurisdiction between the legislature and the judges. Here again we see how what seems to be a purely practical question, that of parliamentary reporting, may, in the land where parliamentary law has been evolved, lead on to the deepest and most important problems of constitutional order. As in many other instances, English conservatism in legal matters is in this case a direct result of the intimate connection between different institutions which have grown up together.

HISTORICAL NOTES

I—The Admission of Strangers

The admission of the public to the House of Commons has a chequered history. There is no information as to the attitude of mediæval parliaments on the subject. Hooker, however, is very clear, and we may regard his statement as carrying our knowledge a long way back. He says, "No manner of person, being not one of the parliament house, ought to enter or come within the house, as long as the sitting is there, upon pain of imprisonment, or such other punishment as by the house shall be ordered and adjudged."[2] The reports collected by D'Ewes for the Elizabethan period show the rule to have been then in full force. He relates several instances of persons who by inadvertence or intentionally had entered the House and were arrested and detained till they had been reprimanded by the Speaker and had paid a fine to the Serjeant-at-arms.[3] The fact that these offenders were as a rule required to take the oath of supremacy shows that they were suspected of being Catholic spies. In the sixteenth and seventeenth centuries calls of the House were repeatedly taken to ascertain whether strangers were present.[4] In 1650 a resolution was passed by the Commons enjoining strict compliance with the rule as to exclusion: "Resolved that the Serjeant do not permit any persons to come within this House in the mornings that the House sit, save only the members of the House, the minister that prays and the officers attending the House."[5] In 1688 it was ordered that the Serjeant-at-arms should arrest

[1] The difficulties here discussed have been much lightened if not entirely removed by the statute 44 and 45 Vict. c. 60, protecting "fair reports" of speeches made at public meetings. See *May*, "Parliamentary Practice," p. 74.

[2] *Mountmorres*, vol. i., p. 143.

[3] *D'Ewes*, "Journals," pp. 334, 394, 491, 512.

[4] *Scobell*, "Memorials," p. 84.

[5] *House of Commons Journals*, vol. vi., p. 512.

any strangers in the House or gallery while the House or a committee of the whole House was sitting. In 1689 this order was renewed, and it was subsequently added that no member was to presume to bring any strangers into House or gallery during the sitting.[1] The rule was re-enacted annually from 1689 to 1713, and from that time it was treated as a sessional order.[2] These prohibitions, like many other police regulations, were habitually disregarded. In 1701 the Journal has an entry (vol. xiii., p. 683), "A complaint being made to the House that many strangers did yesterday crowd into the Committee of Elections to the interruption of the business and disturbance of the said committee. *Ordered*,—That a committee be appointed to . . . consider of methods to prevent disorders at the Committee of Elections." Hatsell reports that the House could seldom be cleared of strangers without a violent struggle from some quarter of the House that strangers might remain, that the Speaker and Serjeant did not carry out the order till called upon to do so, and that the House was in the habit of winking at its being ignored. But he considered the maintenance of the rule of exclusion to be absolutely necessary.[3]

Such was the state of affairs down to the opening of the new Westminster Palace, and even afterwards. Notwithstanding all the old established practice to the contrary, the House's right to conduct its proceedings in private was successfully asserted on many occasions, as for instance on the 18th of May 1849, the 8th of June 1849 and the 24th of May 1870. No alteration was made in the rule that a single member by "espying strangers" could at once have the galleries cleared. The vexatious use of this power, adopted by certain members in order to reduce the old rule to an absurdity, brought about the change that was needed. Upon the Irish obstructionist, Mr. Biggar, "espying strangers" on the 27th of April 1875 Mr. Disraeli moved the suspension of the standing order on the subject; his proposal was at once agreed to and a few days later the present rule was passed.

We hear of the attendance of ladies as listeners in the seventeenth century; in the eighteenth century it had become a well-established practice to allow them to be present. Between 1778 and 1834 they were expressly excluded. They might, it is true, come if they would be content with a view from the roof chamber over the ceiling inserted in the old S. Stephen's Chapel, through the ventilator, round which seats were placed.

Members of the House of Lords have always been allowed to be present; the permission was only withdrawn in 1721 for a few years in consequence of a misunderstanding between the two Houses.

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[1] *House of Commons Journals*, vol. x., pp. 35, 291.

[2] A motion to refer this order to a committee for consideration was brought forward in 1777, but rejected. (*House of Commons Journals*, vol. xxxvi., p. 458.) In 1845 the practice of adopting a sessional order was discontinued, and standing orders (now Nos. 88 and 89) were enacted.

[3] *Hatsell*, vol. ii., 3rd edn., p. 173; 4th edn., p. 182. Carl Philipp Moritz, in his well-known "Reisen eines Deutschen in England" (1782), gives a characteristic account of his visit to the House of Commons at one of its sittings.

II—Publication of Parliamentary Debates

The question of the publication of debates and proceedings in Parliament on the part of persons present at them has always been closely bound up with that of the admission of strangers. Indeed the possibility of such publication was what gave reality to the question of admission and was always the reason for the exclusion, from time to time, of all strangers. Like the wider principle of exclusion the prohibition of reports is only explicable when its origin is considered. The opposition between Crown and Commons in the sixteenth and seventeenth centuries made secrecy a maxim of political prudence. In obedience to it silence was enjoined upon all members under severe penalties. Thus Hooker tells us: "Also, every person of the parliament ought to keep secret, and not to disclose the secrets and things done and spoken in the parliament house, to any manner of person, unless he be one of the same house, upon pain to be sequestered out of the house, or otherwise punished, as by the order of the house shall be appointed."[1]

Keeping strangers away was intended to preserve complete secrecy as to the proceedings. But, of course, there never was a time at which information did not leak out as to what had been done in Parliament. In Queen Elizabeth's time many of the members kept diaries, by the help of which Sir S. D'Ewes in the seventeenth century compiled his valuable work. The journals of the House for this period often give copious information as to the debates, as the Clerks did not then confine themselves to recording decisions and orders of the House, but at times took full notes of speeches and entered them in the journals. At first no objection was made, but on the 17th of April 1628, urged thereto by something that had happened, the House resolved that the entries had been made without warrant.[2] It was found necessary, however, on the 25th of April 1640, once more in express terms to prohibit Rushworth, the Clerk Assistant, from taking any notes without the previous directions of the House, except of the orders and reports made.[3] On the 1st of December 1640 one of the members brought the matter up and a debate took place, resulting in an order that the Clerk and his assistant should not allow copies to go forth of any argument or speech whatsoever.[4] The intense antagonism which had by then developed between the Crown and the House of

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[1] *Mountmorres*, vol. i., pp. 143, 144.

[2] *House of Commons Journals*, vol. i., p. 885.

[3] *House of Commons Journals*, vol. ii., p. 12. Rushworth was the admirable compiler whose collections, in many volumes, have never been superseded as the most important source of information on the history of the Long Parliament and of the Civil War period generally. When Charles I intruded upon the Commons and had his famous scene with Speaker Lenthall, Rushworth had, as Hatsell informs us (vol. ii., 3rd edn., p. 231; 4th edn., p. 243), sufficient presence of mind to take down in shorthand the conversation between Speaker and King, as he was standing by the table. The King sent the same evening for Rushworth's notes and received a copy of what he had himself said, Rushworth praying to be excused from reporting the Speaker's words, as that would have been a breach of privilege.

[4] *House of Commons Journals*, vol. ii., p. 42.

Commons made such measures of precaution quite intelligible. At the same time the Commons made sure that the outer world should have information as to their proceedings to the extent and in the form which they judged desirable. Communications to the public, however, as to debates in the House went on uninterruptedly, being sometimes made by regular visitors to the House, sometimes by members themselves.[1] After the Restoration, when interest in parliamentary debates began to revive, men like Marvell and Anchitell Grey, the latter from 1667 to 1694, made a profession of furnishing notes of the debates, obviously with the tacit approval of the House. Grey's notes are the foundation for the later collections which were published under the name of "Grey's Debates."

At that period, which was innocent of regular newspapers, the business of professional "News Letter Writers" flourished. Many of them were inferior officials, clerks of the House, carrying on their reporting in the lobbies as a subsidiary business unmolested and even with the help of friendly members. The first conflict between the House and those who carried on this practice took place as early as 1694. All reference to debates and proceedings on the part of the news letter writers was then strictly forbidden.[2]

Thus began the long and varied contest between the House and the reporters first of the weekly and then of the daily press, a contest into the details of which we cannot enter, though they provide material for an important chapter in the history of public opinion.[3] The most important events are as follows. In 1738 the House declared the publication of its debates to be a breach of privilege.[4] This position proved quite untenable: it was opposed to the yearly increasing interest of large circles in parliamentary events, and to the growing need for newspapers as channels for expressing party views, and organs for influencing public opinion. It was no easy matter to prevent the predecessors of the political daily journals, the weekly papers which were so prominent a feature

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[1] In the session of 1641 (13th July) the House resolved that no member should either give a copy or publish in print anything that he should speak there without leave of the House (*House of Commons Journals*, vol. ii., p. 209). This order was repeated in 1663 (*House of Commons Journals*, vol. viii., p. 499), reference being made to a recent publication of votes and proceedings in the "Common News Books." During the sessions of 1641 and 1642 there are twenty-one entries of occasions upon which the House took steps to prevent publication of debates. An instance from the year 1646 will show how minutely the House went into these things. Certain speeches made at a conference with the House of Lords had been printed. The House directed the Serjeant to make a search in the houses of four named persons for all papers, originals and copies of the speeches, to seize these and the printing presses, to disorder the letters, and to imprison Field, the printer. At the same time they requested the Lords to concur in the appointment of a joint committee "to consider of some way of righting the Houses and to prevent inconveniences of the like nature for the future." (*House of Commons Journals*, vol. iv., p. 693.)

[2] *House of Commons Journals*, vol. xi., p. 193.

[3] As to the incidents of the struggle, see *Porritt*, "Unreformed House of Commons," vol. i., pp. 589–596.

[4] *House of Commons Journals*, vol. xxiii., p. 148.

of the English literature of the period, from furnishing their regular reports of parliamentary debates: they presented them to the public under very transparent disguises, often of a highly amusing character. The great Dr. Johnson was one of the regular reporters: he gave accounts of parliamentary affairs in the leading periodical, *The Gentleman's Magazine*, under the mask of proceedings of the Senate of Lilliput or of Rome.[1] There were even then shrewd parliamentarians who saw that the refusal by the House to allow publication of the debates was opposed to its best interests, which called for trustworthy and accurate accounts of its doings. Nevertheless the House repeated its decision of 1738 in 1753, and again in 1762.[2] It was then disorganised and corrupt, and was in the throes of its conflict with Wilkes and the fearless *North Briton*, in the pages of which the famous letters of Junius were lashing the King and the degenerate parliament with unexampled journalistic ferocity. The climax of the struggle between public opinion and the narrow-minded parliament of privilege, which had lost all touch with the cultivated section of the middle class, was reached in 1771. In that year the City of London rallied with all its power to the help of the persecuted printer, and, in spite of the arrest of the Lord Mayor, came off practically victorious. Sir Erskine May gives a full account of these events in his "Constitutional History," vol. ii., pp. 27–49.

The House has never formally rescinded its orders of 1738 and 1762, but from the time of the Wilkes affair it has silently ignored them. From the last quarter of the eighteenth century onwards, no attempt has been made to disturb the publication of parliamentary debates. The changed conditions as to reporting were recognised in 1803, when the press obtained from the Speaker an official assignment of a fixed part of the gallery for its reporters. But the declaration that reports were a breach of privilege was then, and still is, technically binding; even in 1859 Speaker Denison stated that the House did not recognise any publication of its debates, and paid no attention to corrections of mistakes.[3] The important reasons for maintaining this position have been stated above. The English conception of the right to the publication of parliamentary debates stands in the most marked contrast to the theory and practice developed in many Continental parliaments: freedom of speech by members has there been used for the purpose of launching slanders against third parties, or for the protection of what would otherwise be invasions of the rights of others. Parliamentary institutions, transplanted from their native soil and subjected to uncongenial treatment, may produce as fruits the most remarkable perversions of their fundamental ideas and objects.

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[1] Dr. Johnson afterwards confessed that he had himself composed many of the parliamentary speeches published by him, or at all events had freely ornamented them as he thought fit. In doing so he claimed to have held an even hand between the two parties: at the same time he declared that he had "taken care that the Whig dogs should not have the best of it."

[2] *House of Commons Journals*, vol. xxvi., p. 754; vol. xxix., pp. 206, 207.

[3] "Notes from my Journal," p. 31.

CHAPTER III

Parliamentary Papers

FEW Parliaments, if any, rival the House of Commons in the lucidity and completeness with which, in the "parliamentary papers,"[1] it embodies its great labours in printed form and thus preserves a permanent record of what it has done. More than fifty years ago Robert von Mohl gave a striking description of the "immensity" of the material thus accumulated; bearing in mind the extraordinary degree in which the yearly production of parliamentary papers has since increased, the expression can certainly not be considered too strong at the present day. At the same time, on closer examination, it will be impossible to withhold our admiration from the excellent arrangements which have been devised to cope with this annually increasing mass of printed matter, extending to thousands of documents, and to enable those who wish to do so to survey the whole and find their way about with rapidity.

The enormous extent of the parliamentary papers arises from several causes. If we consider these we shall at the same time obtain an insight into the various purposes which such papers serve, and shall thus best obtain a general view of all the questions which arise concerning them.

The House of Commons has long maintained as a principle of its customary law that it is entitled to demand the use of every means of information which may seem needful, and, therefore, to call for all documents which it requires. This claim may be enforced without restriction. In its most general form it is displayed in the right of the House to summon any subject of the state as a witness, to put questions to him and to examine any memoranda in his possession. Practically speaking, in its constant thirst for information upon the course of administration and social

[1] See *May*, "Parliamentary Practice," pp. 536 *sqq.*; *Manual*, pp. 202–204.

conditions, the House generally turns to the Government departments as being the organs of the state which are best, in many cases exclusively, able to give particulars as to the actual conditions of the life of the nation, and as to administrative action and its results from time to time. The punctual and exact compliance with this demand is a characteristic sign of the central position which the British Parliament, with its control over the executive, holds in the body politic; from another point of view, it is one of the chief tasks of the Government and other administrative officials, an achievement for which they deserve the fullest recognition. Let us remark in passing, that in the unlimited character of the claim for information, which may in principle be made at any time, there lies a fundamental parliamentary right of the highest importance; it is a right which, both constitutionally and practically, is a condition precedent to all efficient parliamentary government. And we may further remark in passing that it is a right to the immense political and legal significance of which neither the older constitutional theory of the Continent nor the modern German constitutional doctrine has given sufficient recognition.

The right to information through the medium of administrative officials is exercised and complied with in different ways according to the form in which the information is to be given; there are therefore corresponding differences in the classes of parliamentary papers which serve this purpose.

According to time-honoured practice the House of Commons is entitled to demand at any time such particulars as it may want as to trade or finance or as to national or local administration, by means of a direct order. In all cases, however, in which reports treating of matters connected with the exercise of the royal prerogative are to be made accessible to the House the special form of an address to the Crown is required.[1] The source of the distinction between these two modes of obtaining information is, of course, to be found principally

[1] The general rule is that information to be obtained from or through any of the Revenue departments, any department under the Treasury, or any department constituted or regulated by statute, is obtained by means of an order, whilst information to be obtained from or through a Secretary of State or the Privy Council, is obtained by means of an address. (*Manual*, p. 202.)

in history. Even in the middle ages the Chancellor used to make detailed communications to the House upon the financial position of the country, and the right of the Commons to information on money matters was never disputed; but in the sixteenth and seventeenth centuries, in the days of personal government by the King and the Privy Council, a tendency showed itself which we see in full vigour at the present day, in the constitutionally governed monarchies of the Continent: the ministers of the Crown strove to treat their acts and the consequences that followed from them as being, on principle, state secrets and to prevent the representatives of the people from obtaining any deep insight into administration. In all such cases the House was obliged, if it was to obtain the information it sought, to avail itself of the extraordinary expedient of an address to the Crown. The subsequent course of events here, too, was much the same as in every other matter which during that period was claimed as part of the prerogative: the rights of the Crown have been most carefully preserved in form, but their constitutional effect has been completely inverted by placing the exercise of all royal prerogatives in the hands and upon the responsibility of a Ministry completely dependent on the House of Commons. For this reason the distinction between different kinds of parliamentary papers on the score of the legal nature of their contents, some being claimed and some prayed for, though still formally maintained, is devoid of any great political importance. At the same time in this case, as in many others, there is a certain legal and practical significance in the retention of the old form. The exercise of the prerogative, in the present case a refusal of information, no longer points to a right of the Crown as against Parliament, but is a device, supported by a technically impregnable title, by which the Ministry can baffle the Opposition or, under certain circumstances, even a section of its own supporters.

It is only in exceptional cases, as always when there is any question of prerogative, that such a refusal can be given. In any case this use of an obsolete prerogative is the legal foundation upon which a Ministry may base a

refusal of information to the House, and thereby to the public, when it is thought necessary to keep something an official secret. This, of course, only affects a small segment of the whole wide circle of administration and government; in the ordinary course of things the distinction is only really important in one department, namely, that of foreign affairs, and to a certain extent also in naval and military policy. On the question of communicating diplomatic documents, every government must have a discretion as to what ought to be published and what suppressed. The annual White Books and Blue Books of the Foreign Office bear witness that, in such matters too, the British Government is accustomed to push very far the line at which official reticence begins. It may be true that in the publication of papers on foreign affairs the Cabinet of Great Britain acts with traditional prudence and political sagacity, and that it does not omit to take thoughtful care of its own political justification: it is beyond doubt that even in foreign politics it gives the House of Commons and the public far more information as to what has actually taken place and been done than the Government of any other great nation in Europe.[1]

In the above-mentioned cases then, in which the House of Commons or its members desire further information from the Crown, an address is the proper mode of asking for it. But it is seldom that such a course has to be adopted, as for more than a hundred years it has been the practice of the Government to look upon it as one of their official duties periodically or spontaneously to distribute information upon the subjects which would otherwise have to be sought for by address. A literal flood of printed matter pours daily on the House at the instance of the Government, casting light upon all subjects which affect the interests or the action of the state.

The class of parliamentary papers laid before Parliament without previous request comprises in the first place the regular reports of the Secretaries of State and the offices of which they are the heads, of the Privy Council and the departments which are attached to it, and of the

[1] See, on the other hand, *L. Bucher*'s criticism in "Parlamentarismus," pp. 193 *sqq.*

few officials who are in immediate subordination to the Crown, as, for instance, the Lord Chamberlain. It includes also the annual reports of the Board of Trade, the Local Government Board and many other official bodies. Into the same class fall the numerous trade and consular reports published by the Foreign Office, the annual or special reports of Colonial Governors, communications as to agreements with foreign powers, returns and statistics as to military and naval affairs, &c., &c. So also do the reports of the numerous Royal Commissions which, in their endless series of minutes of investigations, provide an enormous mass of invaluable material for the study of the economic, legal and social development of England during the nineteenth century. All these publications bear on their title page the inscription "Presented by Command of His Majesty to both Houses of Parliament."

Closely connected with this class is another division of parliamentary papers, namely, the reports and returns to the House which have to be presented in pursuance of some special provision in an act of parliament. Among these the chief place must be given to certain acts of subordinate quasi-legislation, such, for instance, as the issue of Orders in Council, *i.e.*, executive regulations by ministers in charge of departments. There is in England a fairly large amount of authority, given by act of parliament to certain of the central Government offices, to lay down regulations and orders upon various administrative matters: the acts by which such authority is conferred generally impose, as a condition for the validity of the rules thus framed, that they shall be laid before Parliament and be inoperative until ratified by the tacit assent of both Houses during a defined interval of thirty or forty days.

This class of parliamentary papers is enlarged by provision being made for the publication of returns of regulations as to prisons and schemes of management of public or semi-public institutions, such, for instance, as endowed schools, certain charities, colleges, &c.

The great class of papers first mentioned above, that which includes all which are published in compliance with a simple order of the House, is distinguished by the

inscription on the title page of each such publication, "Printed by order of the House of Commons." This class has two main sub-divisions. The first comprises such papers as contain reports from Government officials, produced in compliance with a direct order of the House : it includes the detailed financial statistics which accompany the estimates, all returns from the Treasury or the Post Office or from the Revenue departments, and statements as to commerce and navigation. The second division comprises such papers as give the information collected by the House itself through its immediate organs, its committees of investigation. All reports of select committees with the addition of transcripts of the evidence taken by them and copies of any written documents laid before the committees are printed by order of the House.[1] The inconceivable wealth and variety of political, economic and statistical material which has been amassed in this way during centuries may well give a better idea of the true nature and living functions of the English Parliament than can be gained from any theory of the subject, however complete.

This class of papers receives a further augmentation under the principle of parliamentary law that all documents which are read or used in the House must be laid upon the table and made accessible to general inspection. In most cases the House orders such papers to be printed.

The parliamentary papers of all kinds for each session are treated as a unit ; they appear, year by year, bound up together under the title of "sessional papers," and are subjected to a second classification, which has no reference to the topics treated, and is the one in current use. Four classes are formed :—I. Public Bills ; II. Reports of Committees ; III. Reports of Commissioners ; IV. Accounts and Papers. The last-mentioned division is by far the most extensive ; it contains all the countless statistical returns as

[1] The debates in select committees and standing committees are not published either in the parliamentary papers or in Hansard's collection, although they are public. They are, however, well reported in *The Times*, which gives full details of proceedings in select committees on private bills.

to the effect and administration of particular acts, the detailed accounts of the country's income and expenditure in all branches of the service of the state, periodical statistics and annual reports upon local taxation, reports as to the proceedings of the judges on election petitions, statistical tables as to the work of the House for the past session, memoranda and printed documents on thousands of things and questions. Session after session an annually increasing number of large folio volumes is produced, placed in the library of the House and presented officially to certain public libraries. The volumes of sessional papers for each year are progressively numbered and have their material arranged with reference to subject matter and form. Most of the volumes contain a great number of separate papers or printed documents, each bearing a distinctive number on the title page and having a separate printed paging. In addition the separate volumes have each a paging continuous through all the documents, which, it is curious to note, is added in manuscript to the official copies of the sessional papers. The greatest perspicuity is given to these myriad papers and printed documents by a series of indexes, covering the whole period of two centuries. There is an index for each year and one for the period from 1800 to 1850 ; also a separate general index for every complete ten years since the last-mentioned date.

The printing of parliamentary papers is undertaken by private firms under contract and is carried out under the supervision of the Speaker and his staff. The whole treatment of the papers is entrusted to the Speaker and they are administered and systematically distributed under his directions.[1] Each member of the House has a right to obtain any paper ordered by the House to be printed or presented by the Government to the House. Bills, estimates, reports of committees and of royal commissions and similar important papers are circulated without special instructions ; other papers can always be obtained by a member upon request, but are not sent until asked for. A special office, under the control of the Speaker, the "Vote Office," attends

[1] Till recently a sessional committee was annually appointed to assist the Speaker in this part of his work.

to the punctual distribution of parliamentary papers according to the instructions given to it.[1]

The sessional papers do not exhaust the whole list of parliamentary publications which concern the House of Commons. In addition to the papers which give material information to Parliament, there are those which are prepared for the arrangement of its business and for distributing to its members information as to the arrangements made. Each day there appear: (1) The *Votes and Proceedings*, *i.e.*, the minutes of the last sitting of the House as prepared by the clerks at the table, and (2) The *Notice Paper*, *i.e.*, the programme of business for the next sitting. As supplements, are given (*a*) the answers to questions asked at the last sitting and not orally answered, (*b*) division lists of all divisions taken at the last sitting, (*c*) reports of private bill committees and standing committees, (*d*) summaries of the state of the order book, *i.e.*, lists of the motions set down, of questions to be asked and of all business already fixed according to the calendar of the House. These classes of parliamentary papers will be further discussed in Parts vii and viii of this Book.

The *publicity* of all parliamentary papers has been expressly placed by statute on a legal footing. In connection with a libel action, based upon a parliamentary paper, the question was definitely raised whether the privilege of freedom of speech, in its widest sense, extended to parliamentary papers. To prevent any future conflicts Parliament passed an act (3 & 4 Vict. c. 9) providing that for the future any proceedings, criminal or civil, against persons for publication of papers printed by order of Parliament, were to be stayed upon delivery of a certificate and affidavit showing such publication to have been by order of either House of Parliament.[2]

[1] The following figures will indicate the extent of the sessional papers. In 1901 the total number of volumes was 92: of these 4 contain public bills; 4 reports of committees; 28 reports of commissioners; and 56 accounts and papers. The session of 1902 produced as many as 130 volumes: 4 containing public bills; 5 reports of committees; 45 commissioners' reports; and 76 being included in the last class. Most of these folio volumes have 600 to 800 pages or more. The index alone for 1901 takes up 124 pages.

[2] See as to the case of *Stockdale* v. *Hansard* (2 Moody and Robinson, 9), *infra* pp. 49, 50; also *Broom*, "Constitutional Law," pp. 875–960.

The enormous but splendidly arranged mass of statistics contained in the reports of committees and royal commissions, in the periodical reports of central departments and in the innumerable returns and accounts, is one of the great achievements of the British parliamentary system; from year to year it sets forth with admirable clearness the whole administrative, social and economic working of the body politic and gives this information the widest publicity.

HISTORICAL NOTE[1]

The history of the printing and publication of parliamentary papers is not deficient in interest. It shows the modification of the attitude of Parliament, especially, of course, of the House of Commons, towards public opinion upon its action. It can hardly be doubted that at times in ancient days, in the fifteenth and sixteenth centuries, it was felt necessary to make certain particular transactions and decisions of the Commons public property; it may be assumed that when this was desired, the same procedure was adopted as in the case of the promulgation of acts of parliament, namely, proclamation in the county courts and other local tribunals.

The first mention in the journals of the printing of parliamentary papers is in an order of the 30th of July 1641: we read, "Ordered that these votes shall be printed and attested under the Clerk's hand."[2] The use of the expression "votes" for parliamentary proceedings appears here for the first time. Between 1641 and 1680 there are repeated orders of the House as to the printing of particular papers. On the 30th of October 1680 there is, for the first time, a general instruction in the form of a sessional order: "*Resolved*,—That the votes of this House be printed, being first perused and signed by Mr. Speaker, and that Mr. Speaker nominate and appoint the persons to print the same."[3] On the 24th of March 1680–1 the House directed "That the votes and proceedings of this House be printed and that the care of the printing thereof and the appointment of the printers be committed to Mr. Speaker."[4] From that day to the present[5] an order to the same effect has been made every session, with the one exception of the year 1702 when, in connection with a dispute with the House of Lords, lasting barely more than a session, it was suspended for

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[1] Since the beginning of the nineteenth century there have been several select committees of the House of Commons concerned with questions as to the printing of parliamentary papers, their cost, their publication, and manner of sale; there are reports of committees in 1825, 1828, 1833, 1835, 1841 and 1848. The most important of all is the Report on Publication of Printed Papers of 8th May 1837 (No. 286), which was prepared with reference to the suit of *Stockdale* v. *Hansard*. It is the chief source from which the foregoing account is derived.

[2] *House of Commons Journals*, vol. ii., p. 230.

[3] *Ibid.*, vol. ix., p. 643.

[4] *Ibid.*, vol. ix., p. 708.

[5] See, for instance, Sessional Order, 2nd Feb. 1904; *Manual*, p. 290.

a short time. Since 1681 the minutes prepared by the Clerks at the table (Votes and Proceedings) have been regularly printed. In pursuance of special orders of the House particular reports and other papers were then printed and either appended to the votes and proceedings or added as a whole to the journal for the session. At the end of the session the journal was compiled out of the daily votes and proceedings and published by the Speaker's command when the House re-assembled. Curiously enough it was customary till 1833 to have a so-called "Manuscript Journal" prepared by special clerks and to treat this for judicial purposes as the authentic version. This expensive and meaningless custom—meaningless because the manuscript journal was a copy made from the printed votes and proceedings—was abandoned in 1833, and from that date the printed copy of the complete journal prepared by the Speaker has been treated by the courts of law as authentic.[1] At this time the parliamentary papers comprised the journals, the bills introduced, the reports of committees, the minutes of evidence given to the House itself or to its committees and reports of a statistical nature on trade and finance.

Turning to the question of publication, we find that from 1641 onwards parliamentary papers have been widely distributed with the full approval, and indeed by the wish, of the House. In 1642 a committee was appointed "to consider of the best way of putting the publick orders and votes of the House in execution; and of divulging, dispersing and publishing the said orders, votes and also the declarations of the House through the Kingdom."[2] The practice of publication did not cease at the Restoration. On the 24th of March 1680–1 a very interesting debate on this question took place, the representative of the Government, Secretary Jenkins, being almost the only opponent of such publication, giving as his reason that it would be "a sort of appeal to the people." The House, however, kept to its established practice.[3]

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[1] See Report of select committee on public documents (23rd August 1833, No. 717), p. 44.

[2] *House of Commons Journals*, vol. ii., pp. 230, 608, 616.

[3] For the debate see *Parliamentary History*, vol. iv., 1306. There are several noteworthy expressions on the part of individual members. For instance, Sir John Hotham said: "Printing our votes will be for the honour of the King and safety of the nation. I am confident, if it had been necessary, you would have had petitions . . . that your actions might be made public." Mr. Jenkins replied that they should consider the gravity of the assembly; there was no great assembly in Christendom that did such a thing. Mr. Boscawen said: "If you had been a Privy Council, then it were fit what you do should be kept secret; but your journal books are open, and copies of your votes in every coffee-house, and, if you print them not, half votes will be dispersed, to your prejudice." Sir Francis Winnington said: "I hope the House will take notice that printing our votes is not contrary to law. But, pray, who sent us hither? The Privy Council is constituted by the King, but the House of Commons is by the choice of the people. I think it is not natural nor rational that the people who sent us hither should not be informed of our actions. In the Long Parliament it was a trade among clerks to write votes, and it was then said by a learned gentleman 'That it was no offence to inform the people of votes of Parliament,' &c."

From 1691 the printed votes and proceedings of the Commons have been treated by the House of Lords as affording authentic information of what has taken place in the Lower House.[1]

The sale of papers was originally effected through the printer; in early days through officials of the House as well. The printers were not always the same, and it appears from the evidence brought before the committees of 1822 and 1835 that till 1777 the sale of parliamentary papers was conducted at a profit, which was accounted for to the Speaker. In that year the sale showed a loss and thenceforward the Treasury took over the account.[2] The journals were first printed in 1742. In 1767 and 1773 a collection, in several volumes, of such reports as had not been inserted in the journals was printed and published, and in 1801 a new and complete edition of reports from 1715 to 1801 was issued. In 1763 the printing for the House of Commons was undertaken by the House itself and the papers began to be distributed *gratis* to members. About the middle of the eighteenth century the regular public sale of parliamentary papers by the printers practically ceased. Access by the public to this source of information was made very difficult, in fact almost impossible. It will readily be believed that the reformed parliament had a strong feeling that so faulty a state of affairs must be put an end to, and that some means must be found of satisfying the heightened interest of the extended electorate in the work of the House of Commons. So on the 13th of August 1835 it was decided that parliamentary papers were to be rendered accessible to the public at the lowest price at which they could be furnished.[3] On the 9th of February 1836 a special committee was formed, consisting of eight members, to assist the Speaker upon all questions concerning parliamentary papers and their publication.[4] After that date a similar committee was for many years appointed at the opening of each session. Immediately after the adoption of the new methods it so happened that an action in the courts of law caused their legal foundations to be put to the test. A certain bookseller and publisher named Stockdale was referred to in a defamatory sense in one of the reports of prison inspectors which were periodically laid before Parliament, the inspector having described a book published by Stockdale as obscene and unsuitable for prison reading. Stockdale brought an action for libel against Messrs. Hansard as the publishers of the prison report (1836). The verdict of the jury went against the plaintiff on the ground that the statements alleged to be defamatory were true. But in his summing up the Lord Chief Justice, Lord Denman, before whom the case was tried, gave a statement of the law which was not favourable to the privileges of the House. He considered that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports did not give to them or to any other

[1] *House of Lords Journals*, vol. xv., pp. 10–12. Further, from the time of the Restoration the House of Lords has followed the same practice as to printing and publishing its parliamentary papers as the House of Commons.

[2] See on this the detailed memorandum of Messrs. Hansard in App. No. 3 to the report of 1837.

[3] *House of Commons Journals*, vol. xc., p. 544.

[4] *Ibid.*, vol. xci., p. 16.

publisher of such reports, legal protection against actions for libel based on the contents of such reports. In consequence of this statement the House appointed a select committee, the report of which led to solemn resolutions that the power of publishing parliamentary reports, votes and proceedings was an essential incident to the constitutional functions of the House; that the House alone had jurisdiction to determine upon the existence and extent of its privileges; that the institution of proceedings for bringing them into discussion or decision before any other tribunal was a breach of privilege; and that a decision by any court which was in contradiction to the determination of either House was an offence against the law of Parliament. Stockdale brought three other actions between 1837 and 1840, all upon the same materials, and they led to a series of conflicts between the House of Commons and the courts of law, in the course of which Stockdale and the Sheriffs of Middlesex were arrested by the Serjeant-at-arms and imprisoned for contempt. The legal question as to immunity was set at rest (1840) by the act of parliament above referred to. The further development of the actions, in which the legal notion of privilege and the punitive powers of the House came under discussion, lies beyond the bounds of the account which we are here giving. See also Part vi, ch. ii, of this Book; *Anson*, "Law and Custom of the Constitution," vol. i., pp. 171 *sqq.*; *May*, "Parliamentary Practice," pp. 141–144.

PART III

The Sittings of the House of Commons

CHAPTER I

Opening of the Session and Constitution of the House

BEFORE the House of Commons can enter upon its work there are a number of constitutional forms to be gone through, all of which are regarded as essential—the summons by the Crown ; constituting the House, after a general election, by the swearing in of members and the choice of a Speaker ; and lastly the solemn opening of Parliament on the part of the sovereign or his representatives by the speech from the throne.

There is no express constitutional enactment laying down when or how often Parliament must be called. We need hardly say, however, that notwithstanding the absence of such a rule, the annual or more frequent summons of the British Parliament, which has taken place for the last two hundred years, is an integral and fundamental principle of public law. Like many other vital provisions of the constitution, the rule that Parliament must meet every year is, directly, only a matter of custom, but is indirectly secured by a number of arrangements which have statutory authority, though the rule itself has never been formulated into an act of parliament. The annual summons of Parliament by the Crown, still technically regarded as a matter of prerogative, has long ceased to be a right of the Crown exercisable at pleasure, and has become a duty ; moreover, the exercise of this prerogative now only takes place upon the advice of a Government which is responsible to Parliament.

From the beginning of the nineteenth century the whole framework of the national finances, the necessity of

annually continuing by means of the Army (Annual) Act (formerly known as the Mutiny Act) the legal status of the standing army, and a large number of other statutory arrangements, have made it indispensable to call Parliament together for its ordinary session not later than the month of February. The session has, since the beginning of the nineteenth century, regularly lasted till August, sometimes extending into September or even later. When it has been necessary to take parliamentary action after the end of the regular session, a contingency, when it occurs, generally caused by the claims of foreign policy or by military events, Parliament has been summoned for an autumn session, opened exactly in the same way as the ordinary session.

A new parliament is summoned immediately upon the dissolution of the old, by the same royal proclamation.[2] In this the Order in Council is announced, commanding the Chancellors of Great Britain and Ireland to take the steps necessary for the formation of a new parliament. In pursuance of the proclamation the Crown Office issues the "Writs of Summons."

There are different kinds of writs for the different classes of persons who are to be called together.

I. The Lords, except the Scotch representative peers, are summoned individually and personally. The procedure by which the Scotch peers find their way to Parliament need not be described here.

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[1] Theoretically the only compulsion upon the Crown to summon Parliament arises from the statute 6 & 7 William and Mary, c. 2 (1694), which provides that within three years at the farthest from the determination of one parliament writs must be issued for the summons of its successor. But at the present day the necessity for renewing the many acts of parliament (including such important acts as the Ballot Act), which have only a limited period of validity and are annually extended by the Expiring Law Continuance Acts is a pledge, as well as the need for the Army Act, that Parliament will be regularly assembled. As to the *political* conditions affecting the royal prerogative of summoning a *new* parliament, see *Anson*, vol. i., pp. 286–293; *Dicey*, "Law of the Constitution," 6th edition, pp. 376 *sqq.*; *Bagehot*, "The English Constitution," 6th edition, pages 57–88.

[2] Queen Victoria during her reign summoned fifteen new parliaments. The interval between the dissolution of the old parliament and the assembly of the new varied from four weeks and one day (1868) to thirty weeks (6 July 1865 to 1 February 1866).

II. The Judges, the Attorney-General, the Solicitor-General and the King's Ancient Serjeant are called by a special formulary known as the "Writ of Attendance."

III. Lastly, the sheriffs or other returning officers of the counties and towns are informed of the summons and date of meeting of the new parliament, and are directed to cause elections to be held for members to serve in the House of Commons.

All these writs are sealed with the Great Seal and, at the present day, are distributed by post.[1]

It will be convenient here to interpose what it is necessary to state as to the election of the House of Commons. It is, of course, outside the scope of our present undertaking to go deeply into the modern British parliamentary franchise which is extraordinarily complicated in its details.[2]

Since the latest franchise reform of 1884 the House of Commons has consisted of 670 members, who are for the most part elected by single-member constituencies.[3] The numerous voting qualifications may be divided into three groups: I. Property qualifications, *i.e.*, the ownership of land of various values according to tenure; II. Occupation of land; III. Residence for a definite period as the inhabitant of a separate dwelling (household franchise), or as a lodger

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[1] The language of the writs of election is now fixed by the Ballot Act, 1872 (35 & 36 Vict. c. 33). Till the passing of this Act the formula in use was couched quite in a mediæval style. See *Anson*, *loc. cit.*, vol. i., p. 57, where the present form is also given (p. 55). If a seat becomes vacant during the continuance of parliament, the Chancery issues a writ of summons upon the Speaker's warrant, granted, in case the House is sitting, in pursuance of an order of the House, but in other cases by the Speaker's official authority. In the former case the order is made upon a special motion which, as a rule, is made by one of the whips of the party to which the member whose seat is vacant belonged. See *May*, "Parliamentary Practice," pp. 631 *sqq.*

[2] See *Anson*, *loc. cit.*, vol. i., pp. 75–141; as to the latest franchise reform of 1884–5, *Renwick Seager's* "The Representation of the People Act, 1884." The old literature on the historical development of the right of suffrage (*Oldfield's* work being the principal authority) has now been supplemented by *Porritt*, "The Unreformed House of Commons," vol. i., pp. 1–118.

[3] The only exceptions are the Universities of Oxford, Cambridge and Dublin, the City of London and those towns of between 50,000 and 165,000 inhabitants which returned two members before the last Redistribution Act (1885). *Anson*, *loc. cit.*, vol. i., pp. 127, 128.

(lodger franchise), or in virtue of some office, service or employment (service franchise). In addition to the widest franchises given by the Reform Acts of 1867 and 1884, the household and lodger votes, there remain certain ancient franchises, for instance those of the legal successors of the freemen in certain old towns. The right of voting is restricted to males of full age who are British subjects. It is forfeited by mental incapacity, by the receipt of parochial relief within twelve months, by a peerage, by the holding of certain offices (sheriff, returning officer), and by conviction for treason or felony or for certain electoral offences. There are certain Crown offices the acceptance of which disqualifies the holder from retaining a seat in Parliament, but does not affect his right to vote.

Elections are held on the footing of certain permanent lists (registers) which are annually settled by specially appointed officers, Revising Barristers, at times fixed by act of parliament, in courts where advocates on both sides are allowed. The elections themselves are conducted under the provisions of the Ballot Act, 1872. In a county within two days from receipt of the writ, in a borough on the day of receipt or the following day, the returning officer must give notice of the day and place of election, which has to take place, in the case of counties within nine days, and in the case of boroughs within four days from the receipt of the writ. On the day fixed for election written nominations of the candidates must be sent in, each requiring the signature of a proposer and seconder and eight other electors as assentors. If within an hour of the time fixed for the election there are only enough nominations to supply the vacancies, those who have been nominated are elected and there is no voting. Otherwise voting by papers (a poll) is fixed for a certain day, which in a borough must not be more than three clear days from the nomination day, and in counties not less than two nor more than six clear days. When the election is complete the result is indorsed on the writ of summons in the form of a certificate (return) and this is sent back to the Clerk of the Crown in Chancery. After a general election a list is prepared in the Crown Office from the entire set of returns and is thence sent to the Clerk of the

House of Commons. In the case of a bye-election a certificate of the result is sent direct from the Crown Office to the Clerk of the House; the newly-elected member has to obtain from the Public Bill Office a confirmation of the arrival of this return and to deposit it on the table of the House as a proof of his right to sit.

On the day fixed by proclamation the newly-elected members assemble in their chamber, and at the same time the Lords appear in theirs. Two o'clock in the afternoon is the regular hour of meeting; but usually a large number of members come much earlier: many secure their seats in the manner recognised by the custom of the House, entering the room as soon after midnight as possible.

The further proceedings differ according as the session is or is not the first of a new parliament.[1] In the first case the House has no president: the few necessary formalities required before the Speaker is elected are therefore carried out under the chairmanship of the Clerk of the House. At two o'clock this officer takes his seat at the table. The mace, which as a rule is carried in front of the Speaker by the Serjeant-at-arms, is now brought in without ceremony, and is placed not on but under the table, as a sign that the House is not yet formally constituted as such. The first requisite for its constitution, the choice of the Speaker, cannot take place until the Crown has given its consent. The Commons, therefore, wait in their places, of course only for a few minutes, for the arrival of the messenger, "Black Rod,"[2] who comes from the House of Lords and requests their attendance in the Upper House.

The members, led by the Clerk, now proceed, by the long corridors leading across the central lobby from the one House to the other, to the Lords' chamber, and remain standing at the bar. In the meantime the sovereign has appeared, surrounded by his court officials, and has taken his seat upon the throne; or, if Parliament is opened by commission, the five Lords who have been appointed Com-

[1] See *Anson*, *loc. cit.*, vol. i., pp. 62–68; *May*, "Parliamentary Practice," pp. 154–156; *MacDonagh*, "The Book of Parliament," pp. 96–114.

[2] The office of "Black Rod" is a much esteemed position of honour, and is usually filled by a retired naval or military officer of high rank.

missioners, with the Lord Chancellor at their head, hav taken their places upon a bench placed below the throne, but raised above the seats of the other peers.[1] In the latter case, the Lord Chancellor announces to the assembly that the sovereign, not thinking fit to be present in person, has commissioned him and the other Lords by letters patent to do in the name of the sovereign everything necessary on his part for the opening of Parliament: whereupon the letters patent are read at length. Then the Lord Chancellor addresses those who are present in the following terms :—

"My Lords and Gentlemen,—We have it in command from His Majesty to let you know His Majesty will, as soon as the members of your Houses shall be sworn, declare the causes of his calling this parliament; and it being necessary that a Speaker of the House of Commons shall be first chosen, it is His Majesty's pleasure that you, gentlemen of the House of Commons, repair to the place where you are to sit, and there proceed to the choice of some proper person to be your Speaker, and that you present such person whom you shall so choose here to-morrow at 12 o'clock for His Majesty's royal approbation."

The Commons and their Clerk then leave the bar and go back to their own chamber, where the election of a Speaker is at once taken in hand. The Clerk rises and points to one of the members, who has, by previous arrangement among the Government party, been chosen to propose their candidate for the Speakership. In the same manner, the Clerk not being allowed to say a word, another member is called upon to second the motion. Very frequently the adoption of the motion, and consequently the election of the Speaker, follows by acclamation. A division only takes place in the rare case of the Opposition proposing an alternative candidate to the person supported by the Government.

The newly-elected Speaker rises at once in his place and makes a short speech of thanks, at the close of which his proposer and seconder lead him to the chair. The mace is placed upon the table, the leader of the House and the leader of the Opposition address their congratulations to the Speaker-elect, and the former then moves the adjourn-

[1] Queen Victoria opened Parliament in person twenty-nine times and by commission forty-three times; as yet King Edward VII has always acted in person.

ment of the House, which the Speaker-elect puts and declares to be carried.

On the following day the solemn ceremony of the royal approval concludes the first act in the constitution of the House. "Black Rod" appears again; but now his approach is announced by loud cries of warning on the part of the doorkeepers, and when he reaches the door of the House he finds it locked and barred: not till he has knocked three times and asked permission to enter is the door opened to him. This is a traditional measure of precaution handed down to the present day from times when the House dreaded rather than expected messages from the Crown, and sought anxiously to protect itself from unwelcome intruders: the custom, though now only a memento of the past, has been, for that very reason, piously kept up. At the request of the messenger the Speaker-elect, accompanied by many of the members, follows him to the bar of the House of Lords, and there addresses the Royal Commissioners, whom he finds in waiting, in the following words :—

"I have to acquaint your lordships that, in obedience to His Majesty's commands, His Majesty's faithful Commons have, in the exercise of their undoubted rights and privileges, proceeded to the election of a Speaker. Their choice has fallen upon myself, and I therefore present myself at your lordships' bar, humbly submitting myself for His Majesty's gracious approbation."

To which the Lord Chancellor, addressing the Speaker-elect by name, answers :—

"We are commanded to assure you that His Majesty is so fully sensible of your zeal in the public service, and your ample sufficiency to execute all the arduous duties of the position which his faithful Commons have selected you to discharge, that he does most readily approve and confirm your election as Speaker."

Then the Speaker again addresses the Commission, entreating that if, in the discharge of his duties, and in maintaining the rights and privileges of the Commons' House of Parliament, he should fall inadvertently into error, the blame may be imputed to him alone, and not to His Majesty's faithful Commons. Then follows the centuries-old enumeration by the Speaker of the rights and privileges of the Commons. The whole ceremony is conducted substantially

in the same way as it used to be performed in the days of Queen Elizabeth, from which it has been handed down.

The act of state ends with the solemn confirmation and recognition of the Commons' rights and privileges by the Crown, and the Speaker, now fully installed in office, returns to the House of Commons, where he reports what has taken place, and once more returns thanks.[1]

Immediately after this, the Speaker reminds the House that the next and most important step towards constituting the House is the taking of the oath required by law.[2] Standing on the upper step of the chair he takes the oath himself and signs the test roll. The other members in attendance follow his example. The next day and the day after are devoted to the swearing in of members, which may only be done at a full sitting of the House. Until a member has taken the oath he has no right to vote, except upon the election of a Speaker, and must take his seat beyond the bar; a breach of this rule lays him open to severe pecuniary penalties, prescribed by act of parliament, for every vote given.[3]

When the greater part of the members have taken the oath, there follows, in the case of the first session of a new parliament, the last act necessary for its opening —the announcement of the causes of summons by the speech from the throne. In other sessions, when there is no need for the election of a Speaker or for the taking of oaths, except for such members as have been elected during the interval since the last session, the King's speech

[1] See the proceedings on the re-election of Speaker Gully, on the 3rd and 4th December 1900: *Parliamentary Debates* (88), 9–14.

[2] For the history of the parliamentary oath, see *infra*, pp. 62–64. Under Standing Order 84, members may take and subscribe the oath required by law, at any time during the sitting of the House, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of; but no debate or business is to be interrupted for that purpose.

[3] All legal questions as to taking the oath are now settled by reference to the Acts 29 & 30 Vict. c. 19 and 31 & 32 Vict. c. 72, which prescribe the following form of oath for members of all religious denominations:—"I ——— do swear that I will be faithful and bear true allegiance to his Majesty King Edward, his heirs and successors according to law. So help me God." By the Oaths Act, 1888, certain persons are allowed to substitute a solemn affirmation for the oath.

is delivered upon the day for which Parliament is summoned. It is an act of state performed either by the sovereign in person or by a commission of five lords: in either case it takes place in the Upper House in the presence of the Commons and their Speaker, who are summoned from their sitting for the purpose.

This completes the constitution of Parliament, and the session is opened. The House of Commons can now legally set about its business. The King's speech, or, to use the correct constitutional term, the declaration of the causes of the summons of Parliament, forms the legal basis for the deliberations of the two Houses.[1] It is, perhaps, worth while to lay stress upon this, as the legal conception of the significance of the speech from the throne has not been adopted on the Continent.[2]

The King's speech gives in broad outline the legislative programme of the session, comments upon the position of foreign affairs and the state of the Crown Colonies and, in a special paragraph, of nearly invariable form, addressed to the Commons only, it promises an early submission of the estimates for the wants of the coming year. The course of the deliberations of Parliament is thus indicated, and they begin regularly with a debate upon the speech and the address in reply thereto.

The general political character of the King's speech leads to the result that the course of the debate upon it is untrammelled as to subject-matter, a circumstance to which the modern adoption of the principle that general debates should be as much as possible avoided has given great importance. General criticism of the Government from all imaginable points of view, demands for redress of grievances, the statement of aspirations and proposals of all kinds, are

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[1] Till 1870 whenever the speech from the throne, at the opening of Parliament, was read by a commission, it was written in the third person. But since that date the sovereign has always spoken in the first person even through the mouth of the Lord Chancellor.

[2] In 1662, the journals of the House show that the Commons appointed committees and transacted other business before the arrival of the King's message to attend him in the House of Lords. Hatsell characterises this as informal ("Precedents," vol. ii., 3rd edn., pp. 288, 291; 4th edn., pp. 305, 308).

rendered possible. The whole policy of the country, domestic and foreign, is open to discussion. The form of procedure adopted is that, immediately upon the speech being communicated to the House by the Speaker, a motion for an address in reply is proposed by some member chosen beforehand, generally some young member on the Government side, and seconded by another.[1] Formerly the address in reply followed closely the wording of the speech, but in recent years it has become usual to frame it as a brief expression of the thanks of the House.

The further debate is carried on in the strict formal manner characteristic of English parliamentary procedure. Any body of political opinion represented in the House, any member who wishes thus early in the session to influence the Government's legislative programme at any point, or to call the attention of ministers or the public to any question, brings up what is desired in the form of an amendment to the address, proposing the addition of some words having reference to the question.[2] For instance, the Irish party almost always proposes an amendment regretting the absence from the Government's proposals of any measure granting self-government to Ireland. Irish grievances thus annually come forward at the very beginning of the session.

Of late years the number of amendments has been enormous, and the debate on the address has become longer and longer. Since the introduction of the closure the Government have stopped the debate after a reasonable

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[1] A characteristic touch is given by the traditional custom that the mover and seconder of the address appear on this occasion in levee dress or uniform.

[2] The modern practice of lengthy debates upon the address, and the moving of formal amendments thereto, is one of the consequences of the material diminution in the number of opportunities for general political debates which has been effected during the nineteenth century. According to statistical tables kindly placed at my disposal by the Clerk of the House (a valuable source of information of which I have availed myself here and in many other places) the address was, from 1801 to 1879, almost invariably voted after one adjournment: in a few sessions two or three sittings were taken. Since 1880 and 1881, in which latter year ten days were sacrificed to the address, the time has varied between the limits of six days (1882) and sixteen (1887).

number of sittings has been devoted to it, thus cutting short the discussion and excluding all amendments not yet disposed of. In 1902 the debate on the address took up ten sittings, in 1903 eight. The numbers of amendments proposed were twelve and thirteen respectively. In earlier days, under the old rules, the House used to resolve itself into a committee to draw up the form of the address, and upon the report of the address to the House a second debate took place. This procedure was abolished by Standing Order 9 on the 29th February 1888, with the object of shortening the proceedings.

Although as a matter of fact the debate upon the reply to the King's speech is the first real business taken up by the House of Commons, there is no legal obligation to adopt this course. On the contrary the House may begin its deliberations with any measure it wishes to discuss. By way of assertion of its rights the House is careful to adhere to a practice which dates from the early years of the seventeenth century. Before the Speaker communicates to the House the speech from the throne, a bill, prepared or kept by the Clerk for the purpose, is read for the first time: the transaction is, of course, a pure form; no more is heard of the bill till it reappears at the opening of the next session.[1] It is always open to the House to take up formal matters, such as disposing of routine business, receiving reports as to writs issued during the recess, adopting the usual sessional orders, &c., before the King's speech is communicated. Moreover, side by side with the debate on the address, other business may go on. Before the end of the debate bills are introduced in great numbers, both by the Government and by private members, and are read a first time, motions may be debated and questions asked and answered. A great deal of business, especially formal business, is crowded into the first few days of the session. The standing committees are formed, select committees are appointed and nominated, the first formalities as to private bills are gone through, and the ballot for days for private members' bills is taken. The distribution of the real work

[1] In the House of Lords this procedure is expressly directed by Standing Order 2.

of the House, its public business, is at the present day entirely in the hands of the Government. The First Lord of the Treasury, as leader of the House, makes an announcement very early in the session as to the manner in which the Government propose to allot the business of the first days or weeks. It will be best to explain elsewhere how an understanding as to this with the Opposition is regularly brought about.[1]

HISTORICAL NOTE

Reference has already been made in several places to the historical points as to the summoning and opening of Parliament (see vol. i., p. 40); there is no need to repeat what has been said before. The history of the members' oath, however, should be shortly sketched.

The parliaments of the middle ages asked no special oath from their members as a legal preliminary to the fulfilment of their duties; the introduction of this requirement is wholly due to the politico-religious conflicts of the sixteenth century.

The first oath imposed upon the members of the House of Commons was instituted in 1563 by Queen Elizabeth's Act of Supremacy (5 Eliz. c. 1): the oath was, in fact, first taken in 1566.[2] The purport of the oath (the oath of supremacy) was that the member testified to his belief that the sovereign of England was the only supreme governor of the realm, both in ecclesiastical and in temporal matters. In 1610 two further oaths were added by the statute 7 Jac. I c. 6—those of allegiance and abjuration—in consequence of the anti-Catholic legislation following upon the Gunpowder Plot. In these oaths the members swore that they repudiated the claim of the Pope to depose a king, and that they freely and heartily promised "to abhor, detest, and abjure as impious and heretical the damnable doctrine and position, that princes which be excommunicated or deprived by the Pope may be deposed or murdered by their subjects

[1] The example of the session of 1904 will serve to show how the constitution of the House takes place:—Opening, 31st of January; King's Speech, 2nd of February; adoption of sessional orders, same day; adoption of customary resolution as to ballot for private members' bills, 3rd of February; order for formation of the Committee of Selection and of the Committee on Standing Orders, 8th of February; formation of Public Petitions Committee, 15th of February; formation of Committee of Supply, 19th of February; formation of House and Kitchen Committee, 22nd of February; formation of Committee on Public Accounts, 5th of March.

[2] *Parry*, p. 215; *Porritt*, *loc. cit.*, vol. i., p. 128; *Hatsell*, vol. ii., 3rd edn., pp. 79–85; 4th edn., pp. 84–92; *D'Ewes* ("Journals," pp. 39, 78, 122) appears to consider that the oath was first administered in 1563 under 1 Eliz. c. 1.; but *Prynne*, "Parliamentary Writs," p. 407, states definitely that the oath was first taken in 1566. New members elected to the earlier parliament after the act was passed no doubt took the oath; *D'Ewes*, p. 123.

or any other whosoever." From 1678 there was the additional declaration against transubstantiation, which had to be made at the table of the House with the Speaker in the chair. The oaths were administered by the Lord Steward or his deputy in one of the rooms of Westminster Palace. Under William III certain alterations of form were made. The old oath of allegiance was replaced by a simple declaration of allegiance to the King and Queen, but otherwise the requirements as to oaths remained in full operation until 1829, when Parliament decided upon Catholic emancipation and the repeal of the Test Act. A special form of oath was then provided for Roman Catholic members.

The chief end, therefore, of the enactments as to oaths was to exclude from the House of Commons those who professed the Roman Catholic faith. Attempts made in the reign of Charles I to exclude members of Protestant sects, Dissenters or Nonconformists, were defeated: the only persons shut out were Quakers and Moravians, who refused to take any oaths at all.[1] Jews were prevented by the form of the oath from becoming members of the House of Commons, as the frame of all the oaths, of course, took for granted the profession of Christianity. The reforms of 1829 left in the form of oath the words "on the true faith of a Christian," which thus continued to shut out holders of the Jewish faith. In 1832 the struggle for relief of the Jews from the disability to enter Parliament began. It was pointed out that they were excluded by no express law, and it was argued that the indirect result of the addendum to the oath just mentioned was an unintentional effect of the law as to parliamentary oaths. It was not till 1858, however, that these views won acceptance. By the act 21 & 22 Vict. c. 48, the three ancient oaths were replaced by a single one for Protestants of all creeds and persuasions, and another act of the same year (21 & 22 Vict. c. 49) made it possible for Parliament to admit Jews as members; either House was empowered to modify the form of oath by omitting the clause which was objectionable to persons professing the Jewish religion. The alteration in the House of Commons was at first effected by sessional order, but in 1860 a standing order was adopted. In 1866 a single oath was prescribed for members of all religious denominations (29 & 30 Vict. c. 19): as the new form did not include the words which took Christianity for granted, Jews at last obtained full parliamentary capacity.

A survey of the whole history will convince anyone that the members' oath of allegiance does not arise out of any constitutional principle inherent in the notion of parliament. It has been merely a political expedient for narrowing the circle of persons eligible for membership. This is the true key to the understanding of the last phase in the story of this institution in England—the objection of the Free-thinker Bradlaugh to take the oath, and the question raised thereby as to the oaths of members without religious profession. There is no need here to enter into any details of the long and complicated struggle—in some of its incidents not very creditable to the House of Commons—of one man against a great majority; it is enough to recall the fact that the contest, owing to Bradlaugh's persistence and strength of character, led to the triumph

[1] As to the admission of members whose religious convictions prevented their taking an oath, see *May*, "Parliamentary Practice," pp. 163, 164.

of the cause of freedom of conscience. In 1888 Parliament passed the last of its acts upon the subject (the Oaths Act, 1888), enabling all persons who entertain a religious objection to an oath, and all persons who assert that they have no religious belief, to substitute a solemn affirmation for an oath.[1]

[1] For the almost inextricable maze of parliamentary proceedings and lawsuits which surrounded Bradlaugh's stubborn struggle for his rights. see *May*, "Parliamentary Practice," pp. 164–168; *MacCarthy*, "History of Our Own Times," vol. v., pp. 27–40; *Annual Register*, 1880, pp. 57–59, 70–76; *ibid.*, 1881, pp. 139–146; *ibid.*, 1882, pp. 15, 30–34; *ibid.*, 1886, p. 9; *ibid.*, 1888, p. 51; *Anson, loc. cit.*, vol. i., pp. 87–89.

CHAPTER II

PROROGATION AND DISSOLUTION [1]

THE termination of the activity of Parliament, except in one particular case, like its summons to begin work, lies technically in the power of the Crown. It may take place in two ways (1) by *dissolution* under a proclamation issued under the Great Seal, or (2) by *prorogation*.

In earlier days dissolution was often personally announced by the sovereign to the Commons, who had been called to the House of Lords for the purpose. Since 1681 the only instance of personal dissolution was in 1818, when the Prince Regent, acting for George III, adopted this course. The usual method is to prorogue Parliament in the manner about to be described, and, shortly after, to dissolve it by a proclamation, which at the same time summons its successor.[2] Since the passing of the Septennial Act, dissolution may technically come about without the exercise of the royal prerogative, namely, by the expiration of the seven years of life limited by the act: but no parliament has hitherto been allowed to continue for its full term. Until 1867 there was another cause by which a parliament was *ipso facto* brought to an end, namely, a demise of the Crown. The difficulties repeatedly caused by the mediæval conception of the exhaustion of the power of Parliament by reason of the exhaustion of the will of its convener were partly remedied under William III: by the act 7 & 8 William III c. 15, it was provided that the parliament in existence at the time of a demise of the Crown should be entitled to act for six months beyond the occurrence of that event. An act of 1797 (37 Geo. III c. 127) made provision for the case of a demise of the Crown taking place after a

[1] See *May*, "Parliamentary Practice," pp. 43 *sqq.* (1851 edition, pp. 107 *sqq.*); *Anson*, *loc. cit.*, vol. i., pp. 68-74.

[2] In modern times the sovereign (*e.g.*, in 1831 and 1847) has repeatedly announced in the speech from the throne proroguing Parliament that it was intended shortly to dissolve.

dissolution. Lastly, the Reform Act of 1867 made the duration of parliament independent of the death of the sovereign and the succession to the throne.

Prorogation is a solemn act of the Crown, putting a legal end to the proceedings of both Houses of Parliament, and at the same time appointing a certain future day for their resumption. It is the regular mode of bringing a session of Parliament to its close. The immediate effect is to put an end to the sittings, to extinguish all the powers given by the House to its committees, and to annul all the legislative stages of a bill which has not yet passed both Houses and received the royal assent. The only parliamentary proceedings which remain untouched are impeachments and appeals pending before the House of Lords. In former days if a prorogation affected a newly elected Parliament, or one which had been already prorogued to a certain day, it was necessary that Parliament should hold a formal meeting on the day originally fixed and that the further prorogation should be announced by a special writ, read by the Lord Chancellor in the House of Lords to the Peers and the Commons at the Lords' bar, or that it should be done by a commission of five Lords. Since the act of 1867 (30 & 31 Vict. c. 81) a royal proclamation has been sufficient in such cases. For the closing of a session, now as of old, prorogation must be brought about through solemn announcement in the House of Lords either by the sovereign personally or by a commission appointed for the purpose.

A parliament which has been summoned for, or prorogued to, a certain day may be called together at an earlier date under 37 Geo. III c. 127, and 33 & 34 Vict. c. 81 : the new summons is effected by proclamation, but the day of meeting must not be less than six days from the date of the proclamation.

Either House may adjourn at its own pleasure : an *adjournment* brought about in this way, which will be further discussed in its proper place, has no legal effect upon the course of parliamentary business. The Crown, however, cannot direct an adjournment so as to produce a temporary pause in the actual proceedings of Parliament ;

a claim to such a right was made by the Stuarts, but it was never acknowledged. Under recent legislation—39 & 40 Geo. III c. 14, and 33 & 34 Vict. c. 81—the Crown has acquired a certain legal power of abridging an adjournment: if it lasts longer than fourteen days the Crown may by proclamation order the resumption of the sittings on a day not less than six days after the date of the proclamation.

It need hardly be said that the exercise of the prerogative of dissolving and proroguing Parliament has long been limited by the conventional rules which together make up the system of parliamentary government. It is always the responsible act of the Cabinet, which must find its support in the approval of the majority of the House of Commons. The prerogative of dissolution may, it is true, be exercised on the responsibility of an incoming Minister even if he has not the support of the old parliament; but he must rely on obtaining the approval of the majority in the new parliament. Instances of dissolution upon the advice of a minister supported only by a minority in the House of Commons are furnished by the celebrated parliamentary crisis of 1784 which was utilised by Pitt, and again by the proceedings of 1834 when the Peel-Wellington Cabinet, which was in the minority, made a fruitless appeal to the country. In former days there was much dispute as to whether this procedure was constitutional, *i.e.*, in accordance with the spirit of the system of ideas worked out for parliamentary government during the eighteenth and nineteenth centuries; but the prevailing view has long been that the question should be answered in the affirmative, and there appear to be good grounds for such a decision.[1]

[1] See *Dicey*, "Law of the Constitution," 6th edn., pp. 376–382; *Bagehot*, "The English Constitution" (1891), pp. 240 *sqq.*

CHAPTER III

Making and Keeping a House and the Arrangement of the Sittings [1]

A NECESSARY condition for a meeting of the House, for the opening of any particular sitting, is the presence of the number of members prescribed by parliamentary law as a quorum. This number is forty, including the Speaker or Chairman as the case may be.[2] At the beginning of a sitting it is the Speaker's duty to consider whether there is a quorum. If there are not enough members present, he may send the Serjeant-at-arms to the committee rooms to request the attendance of members in the House.[3] The Speaker stands to count the members, and if there are not enough in attendance sits down in the Clerk's chair to wait until forty members are present.[4] If four o'clock comes without the quorum being reached he adjourns the House to the next day appointed for a sitting. Up to four o'clock the want of a quorum does not cause an adjournment; at most it causes a pause in the proceedings till four o'clock. The same rules apply in committee as in the House; the Chairman takes the place of the Speaker; if there are not forty members present the committee comes to an end. But in this case the adjournment of the House is pronounced by the Speaker, who is brought in for the purpose and counts the House again. A message

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[1] For what follows see "Manual of Procedure," pp. 29–45; *May*, "Parliamentary Practice," pp. 211–232; Standing Orders 1, 2, 3.

[2] In the House of Lords three lords form a quorum.

[3] The appearance of the Serjeant with the mace *ipso facto* puts an end to a meeting of a committee. In 1879 the Speaker explained, in reply to complaints that had been made on the subject, that the custom was one of long standing; he read an extract from a manuscript book prepared in 1805 on the authority of Speaker Abbot, in which this usage was laid down. See *Jennings*, "Anecdotal History of Parliament," p. 599.

[4] The doors are not closed: every member who enters during the enumeration is counted (*Hatsell*, "Precedents," 3rd edn., vol. ii., p. 168, n.; 4th edn., p. 177, n.).

from the Crown "makes a House," *i.e.*, for the purpose of receiving such a message the House is considered to be validly assembled even if less than forty members are present : in such a case business may be continued without a quorum after the message has been received until the attention of the Speaker is called to the fact.[1]

Next for the sittings themselves.

The House of Commons may hold a sitting upon any day of the week ; there is no statutory provision against the transaction of business even upon Sunday. Of course the holding of a Sunday sitting is a matter of extreme rarity ; there are a few such exceptional meetings recorded in each century, always under circumstances which account for their occurrence. For more than a hundred years Saturday also has ceased to be a regular working day, and accordingly the standing orders of the House expressly provide that no sitting shall be held on Saturday unless specially ordered by the House.[2] There remain, therefore, the days from Monday to Friday as working days. The distribution of business on these days is as follows :—On four days the House has double sittings, namely, on Mondays, Tuesdays, Wednesdays, and Thursdays, the afternoon sitting beginning at 2 p.m. and the evening sitting at 9 p.m.[3] At 1 a.m. the rules put an end to all business, the Speaker adjourning the House till the next sitting day without putting any question. On a Friday there is only one sitting, beginning at noon (Standing Order 1, s. 1 ; and Standing Order 2).

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[1] *Hatsell, loc. cit.*, vol. ii., 3rd edn., p. 168; 4th edn., p. 176; *May*, "Parliamentary Practice," p. 232.

[2] The tradition of Parliament is that the custom of treating Saturday as a holiday arose from the desire of the House to accommodate Sir Robert Walpole. The great Premier wished to have his week-end free, so as to be able to indulge his passion for hunting without interruption. See *May*, "Parliamentary Practice," p. 212. In the sessions of 1902 and 1903 there were no Saturday sittings, in 1901 there were two, in the sessions 1897 to 1900 one each, in 1895 and 1896 two each. For a complete table showing the number of Saturday sittings from 1888 to 1905 see *infra*, Part viii., chap. ii.

[3] Since 1906 there have no longer been divided sittings, and the hours of beginning and ending have been altered. In the Supplementary Chapter the most recent arrangements, with the consequential changes of detail, are explained.

We will first direct our attention to the days on which the House meets twice. At each sitting there is a fixed time for what is called the "interruption of business," viz., 7.30 p.m. at the afternoon sitting and midnight at the evening sitting.[1] The interruption has a great effect upon the disposal of the business of the House. The notion is that at the moment when it occurs all business before the House is to come to a standstill, unless it is of the nature known as "exempted." But if a division is in process of being taken at the time of interruption it is not affected : and if a division is being taken upon an amendment, not only is this concluded but the remaining questions already stated from the chair are also put after the time of interruption.[2] Further, on the interruption of business the closure may be moved ; and if this is done, or if proceedings under the closure rules be then in progress, the chair is not to be vacated till the questions consequent thereon and on any further motion, as provided by the closure rule, have been decided.[3] The immediate effect of the interruption of business, as laid down by the rules, is as follows : (1) If the Speaker is in the chair, he declares that the debate or proceedings stand adjourned ; (2) if the House is in committee, the chairman leaves the chair, the House resumes, and the chairman makes his report to the House ; (3) if any dilatory motion, such as a motion for adjournment of the House or for adjournment of the debate, is pending, it lapses without question put. It is, however, an established practice to allow formal motions, essential to the completion of the transaction on which the House is engaged, to be brought on and dealt with, even though opposed, notwithstanding that the time of interruption has passed ; such motions would include, for instance, a motion for the appointment of a select committee consequent upon the business before

[1] Under the present rules there is only one "interruption": see Supplementary Chapter.

[2] But if a member offers to speak to such question, or rises to object to further proceeding, the Speaker must at once proceed to adjourn the debate.

[3] See Standing Orders 1, ss. 2–9. Any further question which the closure ordered by the House directs to be put are also to be disposed of before business is interrupted.

the House, or a motion for the first reading of a bill sent down from the Lords.[1]

The further effect is different according as we consider the afternoon or the evening sitting. In the former case no fresh business can be taken up by the House, the sitting is simply at an end. But the arrival of midnight only prevents the transaction of new *opposed* business; subject to the qualification above stated as to the completion of pending transactions, nothing to which opposition is offered from any quarter may be taken up. The House remains sitting in order to go through the remainder of its programme, so far as it consists of unopposed business and can be got through before 1 a.m.

Any business appointed for a sitting and not disposed of before its termination, stands over until the next sitting, or until such other sitting as the member in charge of the business may appoint. There is here, however, a difference in practice between what is done at an afternoon sitting and what is done at an evening sitting. Business appointed for the afternoon and not disposed of at the termination of the sitting stands over automatically until the evening sitting. At the latter the procedure is as follows: after the business under consideration at the interruption has been disposed of, the Clerk reads the subsequent orders of the day. Those which are "unopposed" or "exempted" may be taken even after midnight; in the case of other business the member in charge names the sitting at which it is to be taken. He may choose this at his pleasure, and no debate can be raised as to his choice; or he may give previous written notice to the Clerk. If he fails to give such notice or to name a day, the order becomes what is called "dropped," and disappears from the list of subjects for consideration (the order book). The matters thus undisposed of and postponed to later days are placed after the business already fixed for such later sittings. It does not, however, absolutely follow that they will have to be taken in this deferred order; so far as the most important division of the business is concerned, that, namely, brought forward by the Government, the final decision as to the points at which the various

[1] *May*, "Parliamentary Practice," p. 215.

matters are to be placed in the programme of the day for which they are appointed lies entirely in the hands of the Ministry.[1]

The total duration of the sittings is, as already mentioned, precisely fixed by the rules. For an afternoon sitting, interruption of business and close of sitting are synonymous terms. The evening sitting, as has also been mentioned, may be prolonged till 1 a.m. Debate may take place upon "unopposed business," but only until a vote is demanded; this converts the subject into "opposed business," and prevents its further consideration. A Friday sitting, which, as will be shown subsequently, has to deal with a much smaller amount of work, may not last beyond 6 p.m. Whether the orders of the day have been gone through at this hour or not, the Speaker leaves the chair without putting any question to the House. On this day the prescribed hour for interruption of business is 5.30; the rules applicable to the midnight interruption on other days and their effect on business are applied to Friday's work also.[2]

The provisions just described are those which govern the normal course of proceedings; they are subject to several exceptions. The sitting of the House may, in the first place, be extended beyond the closing time fixed by the rules, and in the second place it may be brought to an end before the appointed time by a motion for adjournment.

The first contingency is identical with what is called the suspension of the 12 o'clock[3] rule. The notion of "exempted business" here makes its appearance. The extension of a sitting may take place under two sets of circumstances: (1) A motion may be made by a minister of the Crown at the commencement of public business, to be decided without amendment or debate, to the following effect: "That the proceedings on any specified business, if under discussion at 12 this night, be not interrupted under the standing order 'sittings of the House,'" or to the following effect: "That the proceedings on any specified business, if under discussion at the interruption of business at this afternoon's sitting,

[1] See *infra* in the chapter upon the daily programme.
[2] See *Manual*, pp. 29–35; Standing Order 1.
[3] Now 11 o'clock: see Supplementary Chapter.

be resumed and proceeded with, though opposed, after the interruption of business at this evening's sitting."[1] (2) Bills originating in Committee of Ways and Means, and proceedings taken in pursuance of any act of parliament or standing order are not subject to interruption. In either of these cases the discussion continues until the whole of the "exempted business" is disposed of; then the unopposed business is taken, and when that is all gone through, the House adjourns without question put.

The abridgment of a sitting by a motion for adjournment will be found discussed later, where what is necessary will be stated.[2] Though recent reforms, as above explained, have placed some limitation upon the freedom of the House in the matter of adjournment, the right of interposition of individual members to shorten a sitting has not theoretically been taken away. It is quite otherwise, as the foregoing has shown, with their power of prolonging the sittings; the old state of affairs has been entirely changed in this respect: a directly opposite principle has been introduced. In earlier days not only had the House a free hand as to the duration of its sittings; the only regular method of bringing a sitting to an end was the making of an order on a motion for adjournment proposed by some member: this is no longer the case. In place of the continuous power of the House over the disposal of its time, the automatic regulation of sittings above described has been adopted, and all initiative in relaxing the strictness of the rules has been entrusted to the Government, *i.e.*, to the party majority in power. Even among these, it is not every member who has power to propose a motion for lengthening a sitting; it is bound to be a minister of the Crown. We have here one more of the many indications of the entire change which has taken place in the relations between the Government and the House during the course of the nineteenth century.

There is yet another way in which a sitting of the House

[1] Such a motion can only have reference to a single sitting. A motion to treat all Government proposals as exempted business would be debateable. The Army (Annual) Bill is by custom treated as "exempt." See *Manual*, p. 32, and Standing Order 1.

[2] See Part vii. on the forms of parliamentary work.

may be brought to a premature conclusion—namely, by an adjournment of the House by the Speaker in fulfilment of his duty. There are two cases in which he may be called upon to adjourn the House: the first belongs to the historic procedure of the House—the lack of an adequate number of members in attendance; the second is one in which the most recent parliamentary law has given the Speaker power to adjourn a sitting on his own authority.

As to the former, I may refer to the account already given as to the necessity of a quorum at the opening of a sitting. When once it has begun the control over the competence of the House is transferred from the Speaker to the House itself. If a member demands a count, the Speaker (or Chairman) directs strangers to withdraw, the two-minute sand-glass is turned, and members are summoned as for a division, the outer doors of the House being kept open, even after the two minutes are over. At the expiration of the two minutes the Speaker (or Chairman) counts the members present. If there are not forty in attendance the House is adjourned without question put. The Speaker therefore declares the adjournment of the House, not on his own initiative, but on that of a member. In case there is not a quorum any member can bring about the end of the sitting. The Speaker acts merely as the executive officer of the House, carrying out its rules. The old principle, that the House and not the Speaker is master of the duration of the sitting, is clearly expressed: it is the ancient and still subsisting theory that the Speaker has no right to close a sitting at his own discretion.

In the matter of "counting out" the House, a new and important departure has quite recently been made. By a resolution of the 1st of May 1902, the right of any member at any time to call attention to the absence of a quorum, and thus to have the House counted and the sitting terminated, has been restricted, so far as the evening sittings are concerned, to the hours after 10 p.m.[1] If the figures in a

[1] Standing Order 25. "Counting out" as a tactical device is, by reason of the smallness of the quorum, much less available in the House of Commons than in other parliaments. It is extremely rare that a quorum is not present at the beginning of a sitting. This was the case on the

division taken on any business at an evening sitting before ten o'clock show that forty members are not present, the business under consideration is to stand over to the next sitting of the House, and the next business is to be taken. This provision has never, as yet, been put into operation, and can only be understood in connection with the whole of the precautions against obstruction; it cannot but be regarded as a fundamental breach with the historic procedure of Parliament.

About the time when the last-mentioned rule was adopted a second innovation was sanctioned, which traversed the ancient principle, just stated, that a sitting can only be closed or suspended by a direct or indirect declaration of the will of the House. The order runs: "In the case of grave disorder arising in the House, the Speaker may, if he thinks it necessary to do so, adjourn the House without question put, or suspend any sitting for a time to be named by him."[1] This provision is to be accounted for by certain parliamentary events of the preceding years, but it stands in such glaring opposition to the traditions of the House of Commons that it can only be looked upon as a specially effective reserve weapon for the maintenance of order. It has not, up to the present time, been put into actual operation.

HISTORICAL NOTES

I—The Quorum

The rule that the presence of forty members is required to make a House, like so much in the British constitution, appears to have arisen by chance, and is one of the many procedure regulations which owe their origin to the Long Parliament. On the 5th of January 1640–1, so the journals of the House record, it was ordered "That Mr. Speaker is not to go to his chair till there be at least forty members in the House" (*House of Commons Journals*, vol. ii., p. 63). From that time the rule has been kept intact, and it has never been discussed again. The motive of the order was the desire of the Puritan majority to protect them-

19th of May, 1876, for the first time in fourteen years. The number of "successful" counts out has steadily diminished. As statistics show, there were in the sessions 1890–1903 for the most part not more than three to six; there were ten in the years 1891 and 1897, in 1903 eight, most of them on private members' days.

Under the most recent rules (1906) the time during which counting out is forbidden is the hour from 8.15 to 9.15 p.m. See Supplementary Chapter.

[1] Standing Order 21 (17th February 1902).

selves against a surprise vote during the hours of slack attendance in the early part of the sitting. It is remarkable that it was eighty-nine years before the idea of using the challenge of the presence of a quorum as a technical device of parliamentary tactics took shape. The first instance of a "count out" recorded in the journals occurred on the 26th of April 1729. Hatsell's account of the rules as to the competency of the House is exactly applicable to the present day; in particular he points out that the rule has been extended by custom to a committee of the whole House.[1]

II—The Time of the Sittings

The hours of work in the House of Commons have, in the course of centuries, undergone remarkable variations. Hooker (about 1560) reports that the House met every day, and that its regular hours were from 8 a.m. to 11 a.m.; the afternoon was devoted to committees.[2] In 1571 the beginning of the sittings was fixed at 7 a.m. (*House of Commons Journals*, vol. i., p. 84; see also *ibid.*, pp. 495, 808, 909). On the 28th of March 1604 the journal records a sitting which began at 6 a.m. On the 13th of April 1641 the House adjourned to 7 o'clock of the following morning. Noon was strictly retained as the time for closing; later hours were sacred to committees. In the second half of the seventeenth century 10 o'clock was the regular time for beginning the sittings.[3] James I described the deliberations on the great Protestation of 1621 as irregular because of their having taken place by candle light. An order of the 31st of January 1645–6 directs that no new motion be brought in after 12 o'clock at noon. There are many testimonies in the seventeenth century records to the dislike of debates carried on with artificial light. In the Long Parliament it repeatedly found expression in orders of the House. But as time went on, the competition of the courts of law, which also met in the morning, rendered the postponement of the hour of meeting more and more urgent. It is often recorded that the Speaker sent the Serjeant to the various courts to call the numerous legal members of the House to their parliamentary duties. The gradual pushing on of the time of meeting, moreover, ran parallel to an alteration in the time of the midday meal from 12 to 2 o'clock.[4] After the Restoration the time of meeting got later and later; it was customary, however, till the beginning of the eighteenth century, to adjourn the House till 9 or at latest 10 o'clock in the morning. There are numerous orders giving special permission to introduce bills after 2, 3, or 4 o'clock p.m., these hours being regarded as the closing time. Clarendon, Charles II's famous minister, can still report: "The House

[1] See *Parry*, p. 345; *Townsend*, "History of the House of Commons," vol. ii., p. 364; *Franqueville*, *op. cit.*, vol. iii., p. 68; *Palgrave*, "House of Commons," pp. 66, 67; *Hatsell*, "Precedents," vol. ii., 3rd edn., pp. 165–170; 4th edn., pp. 173–179.

[2] *Mountmorres*, vol. i., pp. 130, 131.

[3] See "Report on the Office of the Speaker" (1853), p. xi, and also the passages referred to in the general index to the Journals, vol. i., pp. 535, 536.

[4] See the quotation from the "Tatler," given by *Townsend*, *loc cit.*, vol. ii., p. 386, in which the departure from the good customs of the fathers as to early meals and hours of work is deplored in moving terms.

met always at eight of the clock, and rose at twelve, which were the old parliament hours."[1] But even in those days instances of longer sittings are not wanting. In 1708 a sitting, which began in the morning, lasted till 2.30 a.m. of the next day; on the 22nd of December 1741 the House met at 9 a.m. and sat till half-past four on the following morning.[2] Bishop Burnet, at the end of the seventeenth century, lamented that Parliament seldom met before 12 and was disposed to rise after two or three hours' sitting. Speaker Onslow remarked in 1759 that the beginning of the sittings had been shamefully postponed of late, even to two o'clock, in spite of all his efforts to prevent it, and referred to the disappointment felt by the Prince of Wales (afterwards George III) at the decay of good old customs; it was the fault, the Speaker said, of ministers. The order of the House on the 6th of February 1717–8 is instructive, namely, that no special motion should be required "that candles be brought in," but that it should be the duty of the Serjeant, when "daylight be shut in," to attend to a supply of candles; evening sittings had become the rule. During the course of George III's reign the working period of the House extended still further into the night. From the beginning of the nineteenth century the hours at which the House really set to work and closed its labours grew still later, to such an extent that Townsend in 1844 could describe the practice of adjourning at midnight, which came in with the Reform Act of 1832, as being a real release. A complete reversal of affairs had taken place; the House now began its sittings at 4 o'clock p.m., the time when everything had usually been over in the seventeenth and eighteenth centuries. The changes effected since 1832 in the hours of sitting have been already described. Modern reforms have once more placed the beginning at an earlier hour (now 2 o'clock).[3] The introduction of morning sittings (formerly on Wednesdays, now on Fridays), starting at 12 o'clock, dates back to the 26th of January 1846, (a standing order from the 25th of June 1852).

The duration of the session has since 1688 been subject to a like law of postponement. Until the accession of the House of Hanover Parliament used to assemble in October or November, and prorogation took place as early as April. Under George III the sittings of Parliament generally lasted till the end of spring; soon after they began to extend into summer, and since the early part of the nineteenth century Parliament has seldom been prorogued till the middle of August, or even later. This is partly accounted for by the fact that it has been customary to call Parliament together later, at all events not earlier than the end of January.

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[1] "History of the Rebellion," book ii., s. 67 (*Macray's* edition, vol. i., p. 174) quoted by *Townsend*, vol. ii., p. 383.

[2] *House of Commons Journals*, vol. xxiv., p. 37. See also "Report on the Office of the Speaker" (1853), p. xi.; *May*, "Parliamentary Practice," p. 183.

[3] In 1906 this was again changed to 2.45 p.m. See Supplementary Chapter.

PART IV

The Constitutional Position of the House of Commons as affecting its Procedure

CHAPTER I

The Relation of the two Houses and its effect on Procedure[1]

THE relation of the House of Commons to the Upper House needs a two-fold discussion, first from the purely legal point of view and secondly from the political. To discuss at full length the great and important problem of English public law thus indicated is, of course, no part of the task which we have here undertaken; the scope of the following remarks is governed exclusively by the need of giving an exhaustive account of the procedure of the House of Commons.

From the purely legal point of view the relation of the two Houses may be described in one sentence. Inasmuch as Lords and Commons in combination with the Crown form the "King in Parliament," the legislative Sovereign, agreement between the decisions of the two Houses is required for the expression of the will of the state in all parliamentary action. This agreement must, in the first place, be perfect; and in the second place it can only become operative in the form of an *act of parliament*. Identical resolutions of the two Houses may certainly have important political results and may indirectly achieve legal results. They may further have a constructive effect in the limited sphere of the autonomy of each House, as for instance when they are directed to the transaction of common

[1] *May*, "Parliamentary Practice," pp. 436–443; *Manual* (1896 edition) ss. 394–412, (1904 edition) s. 250.

business, or when co-operation of the two Houses in the carrying on of parliamentary business has to be arranged, for instance, by a joint committee. But to the outer world an agreement between the two Houses has no legislative effect except when it adheres strictly to the form of a bill, *i.e.*, an inchoate act of parliament. It is to this form alone that we have to apply the above stated principle governing the relations of the two Houses in their legislative work, namely, that of the necessity for complete agreement between the two expressions of will. This agreement must be taken in the strictest sense of the word : we shall have occasion in our account of the legislative process to describe how identity of decisions is brought about, or the failure to reach it established. In the same context another set of cognate questions will present itself for discussion—how the production of an act of parliament is legally divided between the two Houses, to what extent they have an equal share of influence upon its contents. It should, however, be at once stated that as regards all acts connected with the grant of supply or the financial burdens of the nation, even the theoretical share of the House of Lords in the formation of the state will has long been reduced almost to a nullity.[1]

The rules which govern the communications between the two Houses have, in the House of Commons, sprung wholly from usage, and are based, therefore, upon the internal growth of law which the regulation of their mutual business relations has produced in both Houses. All the provisions which apply to the course of parliamentary business are rules either of the Commons or of the Lords.

[1] A peculiar, but quite exceptional, legal relation between the Houses in the event of a conflict between the Commons and the ordinary courts of law, results from the fact that the House of Lords acts as the final Court of Appeal. Such a conflict is only conceivable in the event of the House of Commons using its punitive powers to guard against a breach of privilege. The leading case on this subject is *Ashby* v. *White* (1704), 1 Smith's Leading Cases, 240, which was concerned with the right to exercise the franchise; see also *Paty* v. *The Queen* (1705), 2 Lord Raymond, 1105, and the Report of the select committee on the publication of printed papers (8th of May 1837, No. 286). Such a constitutional conflict is now impossible, owing to the changes in the final Court of Appeal, and the exclusion of the non-judicial peers from the House of Lords when acting as such Court (1875).

There is no law of Parliament as a whole upon the order of business because there is no independent law-giving body superior to both Houses. Each House is, in theory, therefore, the sole judge of its own action in the interpretation and application of the joint rules which have been evolved through centuries of mutual dealing.[1] Practically speaking, any change in existing customary forms of inter-communication has always been effected by parallel provisions in the two Houses in pursuance of a previous arrangement made between them.

The forms of communication, as custom and, to a certain extent in recent years, independent regulation in both Houses have developed them, include in the first place the formal handing over of bills which have been passed in one House to the other for the purpose of bringing an act of parliament into existence. The forms and formulas which are used in this process, and which have remained unchanged for centuries, will be more fitly described when we come to Part x. There are, in the second place, certain forms of communication for other purposes, created by usage in ancient days and still existing; some of them are mere modes of sending messages; others have for their object the

[1] The view stated above appears to me an irresistible inference from the principle laid down by Coke and Blackstone, that "whatever matter arises concerning either House of Parliament, ought to be examined, discussed and adjudged in that House to which it relates, and not elsewhere." It follows that questions of mutual intercourse affecting both Houses must, theoretically speaking, be solved independently by each. The view of May ("Parliamentary Practice," p. 62) as to the legal nature of the *privileges* of the two Houses is only in apparent contradiction to these propositions. According to May, each House exercises its privileges independently of the other, but these are not enjoyed by any separate right peculiar to each, but solely by virtue of a common source of law, the law and custom of Parliament. The contradiction is only apparent, for if the expression, Law and Custom of Parliament, is taken in the sense of the originator of the phrase, Sir Edward Coke, it only comprises such customary law as covers the various rules of privilege. But these have arisen not only from the usage of the two Houses, but also from the usage of the "King in Parliament," from the legal attitude of the two Houses towards the Crown and the acceptance of this attitude by the Crown. Here the High Court of Parliament is conceived as a whole and as the supreme forum, the usage of which is the unique source of law for all the special rights, comprised under the ideas of privilege and prerogative, which belong to the separate members of the Court.

production by one House of a direct and material effect upon the determination of the other, either by inducing it to concur in some resolution or by attempting to remove difficulties in the course of the legislative process. These forms are Message, Conference and Joint Committee. The last-named will be discussed in Part vi., and it will here be enough to include it in our enumeration.

(*a*) *Message.*—Message is the commonest form of communication between the two Houses : it is used for the purpose of requesting the attendance of witnesses, for communicating parliamentary papers, for the interchange of reports, and for expressing a desire for or acceptance of one of the other two modes of co-operation. According to the present rules, as laid down by identical resolutions in 1855, the Clerks of either House are authorised to be bearers of messages to the other, and the reception of such messages is not, of necessity, to interrupt the business then proceeding.[1] Messages are only, of course, transmitted by written communications.

(*b*) *Conference.*—The means of bringing about direct intercourse between the two Houses is a conference. It is asked for by a message, which should always explain the purpose for which the conference is desired. There are, as may easily be understood, no definite rules as to the admissibility of the purpose for which a conference may be proposed ;[2] but it is a matter of principle that no subject which one House is formally discussing should be suggested as matter of conference by the other.[3]

For the purpose of a conference each House nominates, as representatives, certain of its members, who are called managers. By ancient rule it is settled that the number of

[1] Resolutions of the 24th of May 1855 in the *Manual* (1896 edition), ss. 390, 391 ; *May*, "Parliamentary Practice," p. 437.

[2] *May* ("Parliamentary Practice," p. 437) gives as examples of subjects fitting for a conference : (1) To communicate resolutions or addresses to which the concurrence of the other House is desired ; (2) Concerning the privileges of Parliament ; (3) In relation to the course of proceeding in Parliament ; (4) To require or communicate statements of facts on which bills have been passed by the other House ; (5) To offer reasons for disagreeing to or insisting on amendments made by one House to bills passed by the other.

[3] See resolution of the 13th of March 1575, *Manual* (1896 edition), s. 398. *Hatsell*, vol. iv., p. 3.

delegates from the Commons is always double that from the Lords.[1] In choosing managers special care is taken to appoint members who are well acquainted with the matter to be discussed. The House of Lords has the right to fix both the time and the place of a conference. During its continuance the deliberations of both Houses are suspended.

As regards the procedure at a conference a distinction has to be drawn between two kinds, formal and free conferences.[2] At a formal conference, after the managers have met, the deputies of each House give to those of the other a written statement of the reasons for the transactions giving rise to the conference and then return, each to their own House, and report. There is no discussion, nor is any resolution come to. A free conference, on the other hand, permits unrestricted discussion for the purpose of bringing about an agreement between the determinations of the two Houses. As a rule, only two formal conferences can be held upon any subject ; but a free conference can always be held after the failure of two formal ones. On one very important occasion, in 1836, upon the Municipal Corporations Bill, a departure from old usage was made, and no fewer than four conferences took place.

Already in the eighteenth century conferences had sunk almost into disuse. No instance of a free conference is to be found between 1740 and 1836. Formal conferences, the chief object of which is the removal of obstacles in the way of passing bills, were practically done away with by the resolutions of the 12th and 15th of May 1851.[3] Messages have taken their place. The institution of conferences has not been technically abolished, but, as just explained, it has fallen into disuse ; since 1851 message has also been substituted for conference as the means for arranging joint addresses to the Crown from the two Houses.

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[1] There is a note in the journals to this effect upon the 26th of March 1604. *House of Commons Journals*, vol. i., p. 154.

[2] As to the ancient ceremonial at these conferences, at which the Commons had to stand bareheaded, see the Orders of 16th of January 1702, *Manual* (1896 edition), p. 149, and *Hatsell*, vol. iv., 3rd edition, pp. 23 *sqq.*, 4th edition, pp. 26 *sqq.*

[3] *Manual* (1896 edition), p. 147 ; *May*, "Parliamentary Practice," p. 438.

The reason why they have fallen into abeyance really lies in the complete alteration in the *political* relations between the two Houses of Parliament. We can only deal with this subject in outline, for a complete historical account of the fluctuations in the political balance of power between Lords and Commons, even if confined to modern times, would involve the treatment of one of the chief heads of English constitutional law, and would lead us far beyond our limits. The following remarks must suffice.

The political relations between Lords and Commons have been profoundly affected by two circumstances—in the first place by the development of the system of party government, and in the next by the democratisation of the House of Commons and of public life generally which began in 1832. The rule of the parliamentary oligarchy meant politically to the House of Lords a prolongation and confirmation of its real power ; its members were practically compensated thereby for the great limitation upon their rights, especially in respect of financial legislation, which they had suffered in the repeated conflicts between the two Houses in Charles II's parliaments. Paradoxical as it may appear, it cannot be doubted that the great Whig families in the House of Lords, the chief supporters of the Revolution and of the new dynasty, preferred to exercise their political power in the House of Commons rather than in the Upper House. Their best weapon was the narrow and corrupt franchise under which the House of Commons was elected. The socially homogeneous oligarchy, which governed the country unchecked from the accession of the Hanoverian dynasty till at least Pitt's victory over the Coalition, found far more support for its political and legislative power in the Commons than in the Lords. It will, therefore, readily be seen that in this period there was no practical need and no theoretical opportunity for a constitutional conflict between the two Houses. There is always in theory a great risk when two equal constituents are called together for the purpose of arriving at a joint determination, and the danger is greatest in the highest function of the activity of a state, legislation ; but, in point of fact, for the whole period from the Revolution onwards, all risk was eliminated,

inasmuch as, speaking politically, there was really only one constituent operative in the two Houses. Once more we find that the difficulties which purely juristic inspection of a parliamentary constitution brings to light, may disappear as soon as we look into the social content of the legal forms and the actual political structure to which they apply.

The Reform Act of 1832 marks a boundary between two political worlds: it was the first step towards making the House of Commons once more a true representation of the people, and it brought about a profound change in the attitude of the two Houses to each other. The discussion of the measure itself, and no less the discussion of the first great administrative reform which followed it, that of the municipal corporations, led to the severest constitutional conflicts inside Parliament, conflicts which ended in the complete political defeat of the House of Lords. At the critical moment, when the Whig Cabinet had already obtained the consent of the Crown to the extreme measure of creating a number of peers sufficient to overcome the Tory resistance in the House of Lords, the Upper House recognised the danger which threatened its very existence and retired from the field.

Thenceforward a new conception of the constitutional position and function of the House of Lords came to be adopted in England; and a political convention was formed which has been accepted by the House of Lords both through the mouth of its leading members and by its conduct for the last two generations. The new theory ignores the technically admitted equality of the House of Lords in respect of legislation, and treats that body as no longer justified in presenting an absolute resistance to a vote of the Commons. Since 1832, says Bagehot, "the House of Lords has become a revising and suspending House. It can alter bills; it can reject bills on which the House of Commons is not yet thoroughly in earnest, upon which the nation is not yet determined."[1] Hence, while the veto of the Crown has long since ceased to be effective in England, the House of Lords can exercise a kind of suspensory veto; to this has its originally great constitutional power shrunk in the

[1] *Bagehot*, "The English Constitution," pp. 99 *sqq.*

present day. According to the living constitution of the country, the full extent to which the House of Lords can carry its opposition to a great legislative measure accepted by the Commons is to force the Government to make a direct appeal to the country, and to ascertain by the result of the elections whether its proposals really have a decided majority of the nation at their back.

The last great occasion on which the House of Lords asserted its influence upon the course of legislation was its rejection of the Irish Home Rule Bill of 1893. The fact that Mr. Gladstone quietly accepted the defeat given to him on this subject by the House of Lords, without appealing to the electorate, was a strong testimony that he was conscious of what was proved conclusively at the general election two years later, namely, that the disinclination of the House of Lords to loosen the bonds between the kingdoms of Great Britain and Ireland was in full accord with the will of the overwhelming majority of the nation.

Putting on one side such decisions on the great problems of politics, the House of Lords has many opportunities of asserting its traditional policy of social and political conservatism: by means of alterations in bills sent up from the Commons, and the resistance which such alterations express, they can extort compromises from the ruling party for the time being. In this connection it must not be overlooked that the developments of the last thirty or forty years in the peerage and in the party divisions of the House of Commons have brought about in the House of Lords an entirely new situation: there are no longer in that House two great parties nearly equal in numbers. At the present time the House of Lords is composed almost entirely of adherents of the Conservative-Unionist party, who are opposed by not more than forty or fifty Liberal peers. Although this disparity has been caused in the first instance by the great ferment in English affairs during the last thirty years, the Irish question, there can be no doubt that, even apart from the problem of Irish independence, the vast majority of the peers form a homogeneous body on questions of social and economic policy, which is not accessible to party cleavage.

The consequence is that the political relations of the House of Lords to the House of Commons during the last two decades have been very different according as the government has been in the hands of the Conservative-Unionist party or in those of the Liberals and Radicals. In the first case the House of Lords has felt itself a mere appendage to the majority at the helm of state, and has been prepared quietly to accept the schemes, often of a far-reaching kind, of modern Tory democracy; but it has blocked the way and raised difficulties when a Liberal and Radical Cabinet has brought forward a plan of reform. This was clearly to be seen in the attitude of the House of Lords to the great ecclesiastical and administrative reforms of the last Liberal Government (1892–1895), and no less clearly in the tolerant behaviour which it adopted towards the Unionist Governments which followed. In the celebrated speech which was Mr. Gladstone's last word to the House of Commons, in 1894, he painted this situation of affairs with the utmost clearness, and emphatically warned his hearers that it was one which could hardly fail to lead to a great constitutional struggle in the future.

The Radical programme has long contained as one of its catchwords the "mending or ending" of the House of Lords. Whether or when the British Constitution will approach the Radical ideal remains to be seen: for the present one thing is certain; within the limits of the recognised functions which remain to the House of Lords, it still continues to do important service to the nation. It lessens the danger of reforms being unduly hurried on by a doctrinaire Radicalism, and at all events moderates the pace of change, the desire for which is still triumphant in modern England; and thus it helps to diminish the risks inherent in a system of party government with a broad democratic basis. A democratic partisan or Radical theorist may stigmatise these effects as "weaknesses in the British Constitution"; but a dispassionate critic looking scientifically upon the whole matter will probably arrive at an opposite conclusion: in a chamber based on wealth, rank and established property in land, if only it discharges with political tact such narrowly defined functions as above described, he will

see no inconsiderable help to the even flow of development in national policy.[1] Moreover, in the political principle which the functions of the House of Lords express, they correspond both to the present economic and social distribution of power, and to the ingrained aristocratic feeling of the English people. The Peers recognised in good time that in the days of progressive democratisation of constitutional life, they could claim only a materially diminished share in the exercise of sovereign power, and followed up their recognition by a voluntary surrender: by so doing, they have been able to maintain their House as a living factor in politics, so that in its narrowly limited field of action it may yet prove itself a vigorous element in the constitution of the land.

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[1] See *Bentham*'s remarks in his "Essay on Political Tactics," chap. i., § 5.

CHAPTER II

The Crown, the Government and the House of Commons

FROM the moment when the High Court of Parliament entered upon a regular exercise of its functions, the central problem of the constitution must always have been how to form an organic connection between the public authority originally vested solely in the Crown, and the constitutional power represented by the two Houses of Parliament. The solution has had various stages of development. At first, while the idea of the mediæval *Rex regnans* was dominant both in thought and in fact, it appeared in the shape of a direct personal relation of the King to Parliament, symbolised by his appearance at the opening. But at a very early date the problem assumed a second shape, with immense possibilities of development : the servants of the Crown—the Chancellor, Treasurer, Paymaster, Comptroller of the Household and before long the King's Secretary of State—combined to form a permanent organ of the royal government, to be known as the Privy Council. The question then became how to devise a permanent plan of co-operation between three elements so diverse as the personal will of the monarch (from Henry VIII's time so insistent in its demands), the policy of the royal ministers, and the policy of Parliament, with its chief internal factor the struggle for power on the part of the Commons, the representatives of the nation.

We will, in the first place, consider the most ancient historical aspect of the problem.

From the very earliest days it was accepted as a legal principle that the Crown should have no current knowledge of the proceedings in the House of Commons. Under Henry IV (1407) this principle was expressly admitted by the Crown.[1] A *parliamentum* in the fourteenth and fifteenth centuries was a periodical negotiation between Crown and

[1] *Rot. Parl.*, vol. iii., p. 611.

Estates, the framing of a compact between two parties, in which secrecy of deliberation was the obvious policy of the many-headed bargainers. Hence the presence of the King at the deliberations of the Commons was always considered inappropriate, while his right to appear in the House of Lords has continued even to the present day, at all events in theory. Indeed, only one King has ever appeared in the House of Commons, and he but once. The event occurred on the 4th of January 1641–2, when Charles I with an escort made his way into the House in the hope of arresting the five members whom he had charged with high treason before the House of Lords.[1] But, apart from the personal appearance of the King, it must be recognised that under the Tudors and Stuarts, with their absolutist tendencies, the old rule was threatened; there was some danger that a principle diametrically opposed to it might gain a customary force and that the Crown might obtain a right of direct intervention in the proceedings of the Commons. Over and over again they protested with all their might against the Crown's taking note of what was being done in the House, and against the Speaker's showing to the King bills under discussion and even the journal of the House. Under Queen Elizabeth particularly there were numerous cases of interference by the Crown in the proceedings of the House,[2] but the Commons made special efforts to prevent

[1] On the other hand, Charles II, William III and Queen Anne often appeared in the House of Lords. The custom was discontinued by George I, who did not understand English, and from that time it has been a constitutional principle of the House of Lords also that the King does not appear personally in the House except for the purpose of the ceremonial opening and close of the session.

[2] A very characteristic instance of Elizabethan procedure may be taken from the parliament of 1571. One of the members, Strickland, was summoned before the Lords of the Privy Council on account of a speech he had made, and was prohibited from taking any further part in the proceedings of the House. In the consequent debate, at times excited in tone, the Treasurer declared that it had frequently occurred that the Crown had taken notice of speeches in Parliament. See *D'Ewes*, pp. 168, 175. The subsequent proceedings show plainly that the House refused to accept this excuse. See also *House of Commons Journals*, vol. i., p. 500, where there is a report of a heated discussion, exception having been taken to the Speaker having shown the King the book of orders. The resolutions of the Commons of the 17th of May 1604 and the 4th of March 1605–6

her successors from following her example. In 1621 one of the members, Alford by name, declared in debate, "It is an ancient order in both Houses of Parliament that whilst anything is in debate in either of these Houses of Parliament the King should not be acquainted with it till the House had taken some course on it."[1] The question thus raised was neither one of etiquette, nor even one of mere political prudence on the part of the Estates: it was one in which lay hidden the seed of the great constitutional problem how to organise the whole machinery of government. We must now examine rather more closely the history of the problem thus indicated.

As soon as the House of Commons took shape as an organic constituent of the Great Council of the King, the need of some organ to serve as intermediary between the historic possessor of all the power of government and legal authority, the Crown, and the subsidy-granting Commons made itself felt. In the primitive days of Parliament, the Chancellor acted in this capacity; in the fifteenth century the Privy Council. From the time of Queen Elizabeth onwards we can watch the spontaneous growth of an entirely informal mode of communication, though the privy councillor members of the House of Commons, whereby the Crown, the body of ministers and the representatives of the people were kept

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should be referred to here. The former transaction related to the King having asked for and obtained a bill, because it dealt with high treason, and then having refused to return it and kept it for further investigation. The House resolved, "That it might not be drawn into precedent, for any Speaker, being trusted by the House, to deny to read a bill, which he receiveth; to withdraw it out of the House; to inform the King or any other before the House be made acquainted with it." The other resolution runs: "If a member of this House complain of another to a privy councillor for something done in the House, the Committees for the Privilege to examine it." (*House of Commons Journals*, vol. i., pp. 212, 277.)

[1] *Hatsell*, vol. ii., 3rd edn., p. 332, note; 4th edn., p. 352, note. See also the cases quoted in the text of the 16th and 18th of June 1607, on which days the Speaker forbade the reading of certain petitions, alleging that the King had knowledge of them and had directed this course. He was answered, "that to deny the reading of the petitions would be a great wound to the gravity and liberty of the House." In this case, too, the resistance seems to have been so serious that at the next sitting the contested petition was read, and that, too, as it is stated, with the concurrence of the King.

in constant touch. Such members of the Privy Council as belonged to the House of Commons were the representatives there of the Government.[1] They formed the nucleus of the party of courtiers, and, in spite of all protests, kept the Crown fully informed of the position of affairs. In the reigns of James I and Charles I the growing distrust of the King strengthened the opposition of the House as a whole to the part of mediators played by the privy councillors among its members.[2] There was as yet no thought of any organic tie between Parliament and Government. The House of Commons still took its stand upon the platform of resistance to King and Government, narrow indeed but protected by its right of granting supply and its established privileges. It was only slowly that the capacity and will of the Commons ripened to such an extent as to impel them to any constructive and originating intervention in politics. At the sitting of the 12th of November 1640 there was loud expression of disapproval when one of the members, who filled the office of Comptroller of the Household, remarked that the King had taken notice of a matter which was under discussion and it was determined to take steps to prevent information reaching him. Again, on the 14th of December 1641, the King in a speech to both Houses took notice of a bill then before Parliament, whereupon both Houses immediately passed resolutions that the fundamental privileges of Parliament had been broken : a conference was held between the Lords and Commons, and it was agreed to present to the King a declaration, petition and remonstrance.[3] These complaints by Parlia-

[1] A characteristic indication of this already recognised attitude of the Government to the House is contained in an entry in *D'Ewes's* Journals, p. 176. There was a sharp privilege debate on the 20th of April 1571 with reference to the outspoken Strickland (*vide supra*). After giving a report of one of the speeches the account continues: "During which speech the council whispered together, and thereupon the Speaker moved that the House should make stay of any further consultation thereupon." The passage is instructive also as to the position of the Speaker in the Elizabethan House of Commons. There is a similar incident reported on p. 679.

[2] See the above quoted resolution of March 1605–6, also Elsynge's remark upon Cardinal Wolsey's innovation in bringing in privy councillors as members, *supra*, vol. i., p. 40. See also *supra*, vol. i., p. 50, and the case from the year 1614 in the note.

[3] *Hatsell*, vol. ii., 3rd edn., pp. 332, 333; 4th edn., pp. 352, 353: *House of Commons Journals*, vol. ii., pp. 27, 342. Further, see *Anson*, vol. ii., p. 99.

ment show how difficult the solution of the problem of parliamentary monarchy was found in its native home.

The next step taken went to the utmost extreme in the other direction. The Long Parliament assumed full control of government: its action, from the point of view with which we are at present concerned, was tantamount to a total extinction of all independence in the executive. From 1641 to 1649 England was governed by committees of the House of Commons, much as, a hundred and fifty years later, France was governed by committees of the Convention. Cromwell's government, which followed, was a temporary military absolutism, and on the Restoration the problem of organising the share of Parliament in the sovereignty still remained unsolved. Then came attempts at reforming the Privy Council, the trial of such experiments as the "Cabal," that is to say, endeavours to concentrate the power of government in the hands of a select number of members of the Privy Council, meeting regularly for secret deliberation. We cannot stop to trace the tentative steps by which the innovation of the "Cabal" or "Cabinet Government," so much feared and hated by its contemporaries, led, under William III and Anne, to the adoption of the principle and form of Cabinet and party parliamentary government, and how these were afterwards, between the accession of George I and that of Queen Victoria, worked out to their completed shape.[1] It is, however, important for us to observe how hard the principle has had to fight for acceptance in the House of Commons.

The old historic resistance of the Commons to any kind of legal *locus standi* on the part of the King's ministers in the House found expression in a remarkable series of bills

[1] The most recent account of the development in the eighteenth century is to be found in *Miss Blauvelt's* book, "The development of Cabinet government in England," 1902. A lucid summary of the essential features of Cabinet government, based upon its history and with reference to its position at the end of the nineteenth century, is given by *Anson*, vol. ii., pp. 106–140. The latest changes in the political nature of the Cabinet have been described for the first time, in an admirable manner, by *Sidney Low* in his book, "The Governance of England," chaps. ii.–v. See further *Hearn*, "The Government of England," pp. 197–229; *Bagehot*, "The English Constitution," pp. 1–32; *Gladstone*, "Gleanings," vol. i., pp. 238–244.

and acts of parliament, covering the period from 1675 till the consolidation of cabinet government, that is to say, till about the end of the reign of George III. These bills and acts had for their object the prohibition of the holding by a member of the House of Commons of any office under the Crown; they were attempts to return to the old constitutional conception of the complete severance between the House of Commons and the Government.[1] In so far as they aimed at excluding ministers from the House of Commons they have, of course, been completely unsuccessful; an irresistible current of development ran in the opposite direction; but they have had permanent effects upon the legal relations of ministers to the House, which must be considered later.

The history of the rise of parliamentary ministry in England accounts for the further remarkable facts that to the present day the fundamental principle of its existence, the necessity that each of "His Majesty's Servants" should be a member of one of the Houses of Parliament, has never been explicitly laid down, and that the "Cabinet" and "Prime Minister" are not juristic ideas incorporated in any positive statement of English constitutional law. In all these cases we are dealing with what Freeman has called the "Conventions of Parliament," the fundamental principles and arrangements which Parliament, after attaining a position of political sovereignty, has worked out in the course

[1] In 1675 the first of these bills was brought in. In 1680 the House resolved "That no member of this House shall accept of any office or place of profit from the Crown without the leave of this House." This resolution expired with the end of the parliament in which it was passed. The efforts at exclusion reached their climax in the remarkable provision of the Act of Settlement (1701): "That no person who has an office or place of profit under the Crown, or receives a pension from the Crown, shall be capable of serving as a member of the House of Commons."

Even this somewhat guarded provision never took effect, for political necessities were too strong, the final form of the organisation of parliamentary government being just then in the throes of birth. The attempts, too, to diminish the influence of the Crown upon the House of Commons by the exclusion of the holders of certain defined offices had little success. Under George III the mischief of royal placemen and pensioners rose to an intolerable height; Burke's bill of 1782 did away with the worst scandals. See *Porritt, loc. cit.*, vol. i., pp. 204-222.

of two centuries, and maintained by the unaided force of its practice. By custom alone, without any legislative regulation, they have been kept intact, and have become the very essence of the living constitutional law of England.[1]

The establishment of an organic connection between Ministry and Parliament was the seal of the final victory of representative government over the idea of absolute monarchy. For this reason the old complaints were hushed during the first half of the eighteenth century—the springtime of the system of government by the parliamentary oligarchy; but when, with George III's personal government, the principle, though not the form, of parliamentary government was again seriously threatened, they at once revived. Under George III, who, as is well known, strove with might and main to be his own Prime Minister, a new period of constant interference by the King with the proceedings of the House began: his policy finally led to Dunning's famous motion of censure in 1780, and gave occasion to the act of parliament carried by Burke in 1782.

There was no longer any thought of excluding ministers: the influence of the Crown upon the House, which was felt to be unconstitutional, was exercised by quite different and corrupt methods, which were in the first instance attacked by the Place Bill of 1782 (22 Geo. III c. 82). There were

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[1] The fact (adduced by *Sidney Low*, "Governance of England," p. 29) that the word "cabinet" appears in an opposition amendment to the address in the year 1900 cannot be taken as a legal recognition of the body: the same remark applies as to the Prime Minister, Lord Beaconsfield (as Low also mentions, p. 154) having been described in the Treaty of Berlin as "Prime Minister of England." This term is certainly technically inaccurate; in any case "Great Britain and Ireland" would be necessary.

It is no doubt true that in recent years English writers have laid stronger emphasis upon the purely "conventional" basis of parliamentary government than their predecessors. But we must not infer that any corresponding change has taken place in the constitution itself. What has really happened is that English political thinkers have come to recognise clearly the sharp contrast between the British constitution and the written constitutions of Europe and America. It would have surprised old fashioned English writers on state and law had anyone expressed astonishment at their national institutions being based on custom. Long before the era of parliamentary government the English had "political conventions" of the highest significance in their constitution.

at that time numerous sinecures, Court offices, pseudo-offices and similar "places" of every kind which the Crown dealt out to members of the House of Commons for the purpose of securing devoted adherents to the Ministry of the day. Burke's bill did away with a large proportion, though not with all, of these offices. At the same time the House determined upon a novel extension of the old principle which had really become obsolete under parliamentary government: on the 17th of December 1783 it was resolved that, "To report any opinion or pretended opinion of His Majesty upon any bill or other proceeding depending in either House of Parliament, with a view to influence the votes of the members, is a high crime and misdemeanour, derogatory to the honour of the Crown, a breach of the fundamental privilege of Parliament, and subversive of the constitution of this country."[1] It is, of course, obvious that the whole affair was and could be nothing but a demonstration: for the system of parliamentary party government had long since brought about a practice of constant communication between the Crown and the majority in the House. Moreover, the principle, only temporarily checked in its operation by George III, by which all independent action in politics was forbidden to the Crown, had long been in course of formation. This principle was made effective by the use of the fiction that the Crown could have no advisers other than those supported by the confidence of the House of Commons; but in spite of the fictitious shape in which it was stated, its true character as the constitutional foundation of unlimited party government was no less acknowledged than secure. The idea, then, of keeping ministers away from the House, as being the officers of state most subservient to the Crown, had long passed away. And since 1783 the House of Commons has taken no step directed towards keeping the Crown in ignorance of the proceedings in Parliament. The whole idea is completely obsolete, indeed, under the present system of publicity, it is absurd. Still, the principle technically exists and has even at this day a certain constitutional importance. It is assumed that the king has no knowledge of pending schemes of legislation and must

[1] *Hatsell*, "Precedents," vol. ii., 3rd edn., p. 334; 4th edn., p. 354.

make his official demeanour conform strictly to this theory: nothing, therefore, like the institution of "previous sanction" by the Crown as it exists in the constitutional states of the Continent can ever make its appearance in England, even in an attenuated form. The rule, however, of non-intervention by the Crown in the proceedings of Parliament has always been subject to one not unimportant exception; in the case of bills which affect the royal prerogative, not merely knowledge, but even prior assent by the Crown is required before they are brought up for discussion in Parliament. This principle has always been applied to bills for imposing or reversing attainder, or for granting pensions or honours from the King in Parliament; and since the passing of the resolution of 1713 all money bills have to be brought in by the Crown, *i.e.*, by the Government.

There is no more striking testimony to the absence from the modern parliamentary system of the old anxiety to keep the Crown in ignorance of parliamentary doings than the fact that since the time of George III a special arrangement has been made to give the sovereign as speedy and direct information as possible about the debates in the House of Commons. It became usual towards the end of the eighteenth century, and still is the custom, for the leaders of both Houses to furnish the King each evening with a report of the day's proceedings. This arrangement was continued under George IV and William IV, and was insisted upon by Queen Victoria. Though earlier reports have not been preserved, Queen Victoria made a collection of all those that were sent to her by the leaders of the Lords and Commons during her long reign, and they are kept in the royal private library. As yet these documents have been kept strictly secret, but doubtless at some future day they will form an important source of material for the historian of the Victorian age, and will elucidate many a doubtful point. Gladstone, Disraeli, Balfour and the other Prime Ministers of the latter part of her reign were as faithful in complying with the custom as Peel, Palmerston, Russell, and the other prominent statesmen of her youth.[1]

[1] See *Anson*, *loc. cit.*, vol. ii., p. 136; *MacDonagh*, "The Book of Parliament," pp. 350–365.

The practice of giving the sovereign a direct report may, if the letter of constitutional rule alone is regarded, be considered to be a direct violation of the old principle of the non-intervention of the Crown. Indeed, in 1879, during the course of a debate on the subject of the use of the royal prerogative, Mr. Leonard (now Lord) Courtney, on the strength of a remark in Erskine May's book, characterised the whole procedure as unconstitutional. Mr. Gladstone, who was then leader of the Opposition, called this an absurd idea, and the House unanimously accepted his description. No action was taken upon Mr. Courtney's suggestion, which was simply ignored, and the matter remains in the same position to this day. There can be no doubt that Mr. Gladstone's view was the correct one. In a time when every citizen can within a few hours obtain full information of what has taken place in the House of Commons, it would be ridiculous to insist upon keeping up the appearance of ignorance on the part of the Crown.

The special legal consequences which, under existing constitutional law, flow from the combination of an office under the Crown with a seat in Parliament, are results of the historic mistrust of direct Crown influence on the House. Although, as stated before, the complete exclusion of ministers from the House of Commons, as designed by the Act of Settlement, was given up almost at once, another act of parliament, which was passed very soon afterwards, in 1707, laid down the lines upon which the subject has ever since been treated. The act (6 Anne c. 7, c. 41 in the revised statutes) provides (s. 24) first, that no one shall be capable of being elected who has accepted from the Crown any new office created since the 25th of October, 1705 ; secondly, that the holders of certain specified offices shall be incapable of election ; thirdly, that persons who hold pensions from the Crown during pleasure shall be disqualified. Under s. 25 it is provided that when an office under the Crown and a seat in the House are not incompatible, the acceptance of such an office, if of profit, causes the seat to become vacant, but does not prevent re-election. There have been numerous statutes modifying this fundamental enactment, but they have left untouched the two main principles stated above.

There are therefore (1) political offices which disqualify their holders from election, namely, all new offices created since 1705 (such as those of paid Charity Commissioner or member of the Legislative Council of India), and also certain old offices which have by later statutes been specially made to carry disqualification (*e.g.*, the office of Master of the Rolls); (2) offices under the Crown the acceptance of which necessitates a fresh election; such are, for instance, the old offices of Secretary of State and Chancellor of the Exchequer, and also new offices (such as that of the President of the Local Government Board) which have by statute been included in this group; (3) offices which are not technically "under the Crown," and which, therefore, carry with them no special disqualification (such as the office of an Under-Secretary of State). Under this head we may classify the cases in which a transfer from one office to another leaves a member's qualification unaffected.[1] There are also certain special enactments preventing more than four principal and four Under-Secretaries of State sitting as members of the House of Commons at the same time.[2]

There is, finally, another legal consequence of this legislation which for a long time has been the chief practical effect of the principle of incompatibility between office and membership of the House of Commons, although it was not in the least degree contemplated. It is well known that English parliamentary law recognises no power on the part of a member to relinquish his seat. In the absence of any statutory disqualification a seat can only be vacated by a resolution of the House, a course which it has seldom been disposed to adopt. The Queen Anne legislation here came to the rescue, with its provisions about offices inconsistent with membership. When the wish to retire became frequent it was found possible to arrive at the desired result without any alteration in the law: all that was needed was for the Crown to provide a member who wanted to resign with

[1] See Representation of the People Act, 1867, Schedule H. On the whole subject, see *Anson*, vol. i., pp. 79 *sqq.*, and the careful tabulated summary of all the separate enactments, *ibid.*, pp. 93–96. *Franqueville*, *loc. cit.*, vol. ii., pp. 531 *sqq.*

[2] 15 Geo. II c. 22, 22 Geo. III c. 82, 18 & 19 Vict. c. 10, 21 & 22 Vict. c. 106, 27 & 28 Vict. c. 34.

a nominal office the holding of which caused him to cease from being a member. There are certain administrative offices connected with royal properties which have long since ceased to exist except in name, and which are used for this purpose —the Stewardship of the Chiltern Hundreds, of the manor of Northstead, and others. Although there are several offices of the kind, the first named is the best known and is the one usually referred to. They are ordinarily given by the Treasury to any applicant without inquiry; they would only be refused in the case of a pending election petition or criminal proceedings.[1]

The *political* object aimed at by the legislation to which we have been referring is clear, but it has long ceased to be desired. For the acceptance of an office of profit under the Crown no longer arouses suspicion that its holder has been subjected to improper influence and that it is necessary for him to submit himself anew to the ordeal of election. The chief result of the retention of the rules is to impose on a newly formed Government the necessity for a number of re-elections and to cause useless expenditure of time and inconvenience. The chances to which most elections are exposed make the result of fresh contests very doubtful in many constituencies: considerations of safety often influence and at times prejudice the composition of a Government; suitability for office rather than likelihood of re-election ought to govern the choice of a man for a post in the Government.

The anomalous relation between ministers and the House of Commons is made all the stranger by its being controlled by the principle of parliamentary government, as settled in the eighteenth and nineteenth centuries, that a minister must be a member of one of the two Houses. The result may under certain conditions be to produce an awkward situation, as we may see from an incident in the career of Mr. Gladstone: in December 1845 he was appointed Secretary of State, thus losing his seat; from various causes he was unable to secure re-election and remained Secretary of State till July 1846 without a seat in Parliament. Thirty years later, Mr. Gladstone drew attention to this breach of constitutional conventions

[1] Report on Vacating of Seats, 9th August 1894, No. 278.

—which was challenged at the time—and declared it to be very unlikely that it would be repeated.[1] But no one has better recognised the eminent importance of this fundamental rule of modern parliamentary government than Mr. Gladstone himself: "The identification of the minister with the member of a House of Parliament," he says, "is, as to the House of Commons especially, an inseparable and vital part of our system. The association of the ministers with the Parliament, and through the House of Commons with the people, is the counterpart of their association as ministers with the Crown and the prerogative. The decisions that they take are taken under the competing pressure of a bias this way and a bias that way, and strictly represent what is termed in mechanics the composition of forces. Upon them, thus placed, it devolves to provide that the Houses of Parliament shall loyally counsel and serve the Crown, and that the Crown shall act strictly in accordance with its obligations to the nation."[2] Mr. Gladstone's words, however true they are, sound a little antiquated at the present time, like respectable but obvious commonplaces. For the Crown, which plays so large a part in his constitutional and political thinking and in his political terminology, has no longer the same considerable influence on English political life as it had in the days of his youth. The parliamentary character of an English Ministry at the present day can therefore no longer be described as being that of mediator between King and nation. The democratic development of the constitution during the last two generations has made the electorate unlimited ruler over the policy of the country. It has made the Prime Minister, indicated by the result of the elections, into an uncrowned temporary regent: both towards the rest of the Ministry and towards the Crown a modern Prime Minister of England occupies a position of supreme political power and legal authority. With good reason has his position lately been compared to that of a President of the United States: indeed it is not going too far to assert that, under favourable circumstances, a British Premier of commanding

[1] In recent years an analogous case occurred in reference to the holder of a subordinate Irish office under the Crown.

[2] *Gladstone*, "Gleanings," vol. i., p. 225.

personality, who knows how to employ all the latent political and administrative powers of his high office, wields an actual and legal authority which surpasses that of the head of the American Republic.[1]

It is impossible in this place to follow out the effects of the recent inner changes in the position of the British Ministry, however enticing and profitable the subject may be. The most important result, so far as our immediate task is concerned, is now well known to us. We have learned that the complete unfolding of the system of parliamentary party government has revolutionised the order of business in the House of Commons. Confining our attention to the relations between Ministry and representative assembly, the change may be juristically stated with the utmost precision. It consists in the abrogation of the historic, and still technically subsisting, principle of complete equality among all members of the House in respect of procedure and the order of business. In its place a new principle has been adopted, and this may be summarised as follows :—The Government, under the existing parliamentary system, have, by means of a series of privileges, conferred by the rules of procedure, become the masters and leaders of the House of Commons as a working organisation. Fully to appreciate what this means, we must remember that all English Governments are party Governments, and, therefore, a survey of the position of the parties in the House is indispensable if we wish to attain a complete understanding of the working of the English parliamentary system.

[1] See *Sidney Low*, "Governance of England," chap. ix.

PART V

The Relation of Procedure to the Political and Social Structure of the House of Commons

CHAPTER I

The Parties and the Rules

FROM the time of the Revolution, that is to say for rather more than two hundred years, the whole course of constitutional development in England has been determined by one political fact—the presence in the House of Commons of two great parties. The phenomenon of political parties is one of a very special kind, and has been extremely formative over the whole range of modern public law; but this is hardly the place for any detailed analysis of its nature, or for a discussion of the conditions needed for its birth and its effective working. This can be the more easily dispensed with in that we have, in Ostrogorski's masterly work, an exhaustive account of the history, structure and functions of modern English party life, based upon careful first-hand observation and research upon the English and American party systems. We have, moreover, already referred, with sufficient fulness for our purpose, to the chief occurrences of historical importance in the history of English parties.[1] Our present concern is simply with the order of business and procedure of the House of Commons. Now, in recent English parliamentary affairs, party organisation has always been taken for granted, and the assumption of its existence has been transferred to the systems of all parliamentary nations; there have always been the two great historical parties, and in the last quarter of the nineteenth century a third, the irreconcilable Irish party. To what

[1] See *supra*, vol. i., pp. 57, 67-70.

extent have this assumption and these historical facts been reflected in procedure and practice, and what is the connection between procedure and the party system ?

A full description has already been given of the way in which the division of the Commons into two great parties manifests itself in the outward appearance of the House, in the arrangement of places. We must, however, remember that this arrangement has never been recognised by any decision of the House. So far as the rules are concerned, there is nothing to prevent any member from taking a place without regard to his party allegiance. Nor is there any express recognition of party in the standing or sessional orders. This has not prevented the formation of a number of political usages and customary regulations which owe their existence to the fact that there are such institutions as parties and party government ; among these are the composition of standing committees with proportionate party representation, the practice of taking speakers in debate from the two sides alternately, the custom of practically allowing the leader of the House, that is to say, the leader of the majority party, to settle all personal questions, such as the nomination of the Speaker, the Chairman of Ways and Means and the Chairman of the important Committee of Selection, who also presides over the Committee on Standing Orders. It is of course obvious that parliamentary procedure cannot technically take any notice of the existence of parties, as all forms and expedients known to the rules must be equally open to every member, whatever party, majority or minority, he may belong to. It is true, as we have learned, that the majority has gained a certain number of privileges in the shape of certain special rights given by the rules to the Ministry, who are, under the logically worked out system of parliamentary party government, no more than an executive committee of the majority in the House of Commons. But it must not be forgotten that the privileges given to certain members of the majority, who are Ministers of the Crown, are only conferred upon them in that capacity, and cannot be regarded as rights belonging technically to the party.

There are, however, many ways in which the influence of party makes itself practically felt in the disposal of the

actual business of Parliament. On all the more important matters which have to be brought forward by the Government as the executive organ of the majority, it has become customary to arrive at some understanding between the two great parties or their leaders, which often forms a basis for joint political action. This practice dates back to the time when the system of cabinet government was perfected, and when the existence of two great compact parties became a standing and dominant element in English politics, *i.e.*, to about the beginning of the nineteenth century. On certain subjects of great national importance, such as foreign affairs, especially when it is to the interest of the state that the decision of Parliament should appear to be the unanimous decision of the nation, it is a recognised convention that the consent of the Opposition to the proposals of the Government should be obtained by unofficial communications, or, at all events, that a serious endeavour should be made to obtain such consent. Another custom, belonging to the same class of parliamentary usages, is that of arriving, or trying to arrive, at some kind of compact as to the speed at which the chief measures of the session shall be taken and as to the distribution over the session of the work that has to be got through. Lastly, it is of the greatest importance to the prospects of a bill or motion whether it is officially looked upon as a party matter or not, and whether, therefore, it is discussed "on party lines" or not. The duration of the session is nearly always fixed in advance; so that in spite of all increase of stringency in the rules dealing with obstruction, the Government is still to some extent dependent upon the goodwill of the Opposition for the passing even of any substantial part of their yearly programme. Hence it is always worth while for the Cabinet to make a strong effort to arrive at some understanding with the Opposition as to any large project of legislation. It is one of the ordinary incidents of parliamentary business for an official declaration to be made by the leader of the Opposition as to the attitude of his party towards the great legislative proposals before the House.

The party system has a very marked effect upon one prominent feature of parliamentary life—the attendance of

members. The large number of the representatives of the people, and the considerations of space which have been described above, when taken together, make it almost a physical impossibility for all members to be present at the same time; as in other parliaments, there are great variations in the number who attend.[1] The House of Commons being a politically sovereign assembly, this variation, unless guarded against, would involve great risks to a Government which is absolutely dependent upon the constant support of a majority of those present. The consequence is that there has never been a time when complaints of the absence of often quite a large proportion of the members have not been heard. The means adopted in earlier years for enforcing the duty of attendance, such as calls of the House (of which more in the historical note) have long been abandoned as futile. They have been replaced by other and more effective inducements. In the first place, there is a deepening of the feeling of responsibility of members to the electorate; this is itself a result of the gradual but decided increase in the dependence of representatives upon those who have sent them to Parliament, which has followed the extension of the suffrage. Then there is the growth of *publicity* in the whole of political life caused by the activity of the press, the holding of meetings and the heightened participation in politics of the more numerous classes and their organisations. Moreover, the improvement in the means of communication between London and the provinces, turning the somewhat trackless Great Britain of the seventeenth century into a compact little country, has had a powerful though, of course, purely external effect in improving the attendance at Westminster.

In party-governed England it is, however, not so much a constant large attendance that is important as a steady attendance in numbers proportioned to the strength of the parties. The technical expedients which have been applied to bring this about have acquired, of course, great import-

[1] It is only on the occasion of great parliamentary battles and memorable political crises, such, for instance, as the division on Mr. Gladstone's second Home Rule Bill, that the number of members exceeds or even approaches six hundred.

ance, and an elaborate organisation of party forces in the House has been developed. The chief features are two—the "Whippers in" or "Whips," and "Pairing." Both are intended to guard against the dangers of irregularity in attendance which threaten both Government and Opposition —the former, of course, the more seriously.[1]

The Whips are permanent honorary party officers chosen from the members of the party itself; they hold in their hands the entire external and internal organisation and management of the party as a political parliamentary unit. The chief Whip on the Government side is always one of the most experienced and trusted members of the party, and he is assisted by younger colleagues. His high standing is testified by his regularly holding the office of Parliamentary Secretary to the Treasury; the other Whips are appointed to Junior Lordships of the Treasury, nominal and quite unimportant posts. The office of Parliamentary Secretary to the Treasury took shape in the early part of the eighteenth century, and its holder was, from one important part of his duties, frequently called Patronage Secretary; he had in his hands the disposal of the whole Government patronage—the distribution of places, livings, open and secret favours. In the days of rotten boroughs and of secret service money, often amounting to millions of pounds, the holder of this office, one of whose duties was to look after the purchase of constituencies for the maintenance of the majority, obtained an enormous influence over members of Parliament.[2] Since the reforms of 1832, this part of his work has all disappeared and there is now no longer any

[1] See *Franqueville*, "Le Gouvernement et le Parlement Britanniques," vol. i., pp. 565–567, vol. iii., pp. 70, 115, 389.

[2] The development of this form of parliamentary management during the period of the oligarchy reached its zenith in the days of George III's personal government. The King's correspondence with his ministers shows clearly how unscrupulously and persistently the business of obtaining majorities by the purchase of boroughs and direct bribing of members was carried on. The third party of "King's friends" thus recruited was always able to turn the scale. One of the main sections of Burke's famous "Thoughts on the Causes of the Present Discontents," is devoted to a trenchant attack on the system. (Bohn's edition, vol. i., see especially pp. 321 *sqq.*) Cp. *Lecky*, "History of England in the Eighteenth Century," vol. iii., c. xi: *Green*, "History of the English People," vol. iv., pp. 217, 218: "Letters of Junius," *passim*.

secret service fund available as a constitutional arrangement in the interests of the Government for the time being. In modern times one large department of party management has been taken out of the hands of the Whips and entrusted to the great party organisations (caucuses) and party funds, managed by salaried officials; the highest of these, the General Agent of the party, under the direction of the Prime Minister and the chief Whip takes charge of the extra-parliamentary action of the party and the conduct of elections. The chief Whip still presides over the internal working of the party machine in Parliament. Of course, now that there is but little patronage exercised directly by the Prime Minister, the Patronage Secretary has to ply his calling with very different tools from those used by his namesake a hundred years ago. He is the Prime Minister's most influential adviser and executive officer for all the internal parliamentary affairs of the Government party. The chief Opposition Whip stands in the same relation to his leader. It would be hard to give a better description of the unique and important functions of the Whips than that of Ostrogorski, to whom we owe the best and most thorough book on English and American parties.[1] He says: "The two chiefs act in broad daylight, and are responsible to the public; the Whips work in the dark and are unknown to the mass of the public. The leaders lay down the main line of action, and exert themselves actively on great occasions. The Whips, who are initiated by the leaders into all the secrets of the plan of action, see that it is carried out and keep an eye on the actors so as to ensure that each man is at his post and ready to play the part which has been allotted to him, whether it is a minor part or even that of a supernumerary. Being constantly in touch with the members in the lobbies, &c., of the House, the Whip is in a position to follow the current of opinion in the party; he reports thereon to the leader, nips incipient revolts in the bud, retails the leader's views to the members of the party, and communicates to them the plans into which the leader thinks it expedient or necessary to initiate them. The

[1] For what follows see *Ostrogorski*, "Democracy and the Organisation of Political Parties," vol. i., pp. 135–149.

authority of the Whip is of a purely moral nature; it is derived solely from the prestige of his position and from his tact. He must be acquainted with each member, know his weak and strong points, be able to talk him round, to coax him by smiles, by exhortations, by friendly remonstrances, by promises or other devices, such as invitations to the entertainments of the dukes and marquises of the party, which he gets for members and their wives. Every day he must perform wonders of affability, of patience, and of firmness in view of the object which is the dream of a Whip's whole existence; to keep the party united, compact, and in fighting order."[1] Inducing members to attend regularly at the sittings, and particularly securing their arrival and remaining for particular times at which critical divisions are to be expected, are the daily tasks of the Whippers in. They are carried out by the sending of what are called "whips," *i.e.*, notes containing a request for punctual attendance on such and such an occasion. According as this request is singly, doubly, trebly, or quadruply underlined is it regarded as less or more urgent. To disregard a four-line whip, in the absence of really unavoidable obstacles, is considered an act of gross disloyalty to the party and may have serious consequences. As a matter of fact the Government Whips exercise very stern discipline.[2]

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[1] *Ostrogorski*, vol. i., p. 137.

[2] Ostrogorski gives a vivid description of the daily work of the Whips. "If he is the Government Whip he must take care 'to make a House' and 'keep a House,' so that Government bills or motions of the day can be discussed. He must have a reserve of members in the lobbies or in the smoking room to take the place of those who have left the House, so as to stop the attempts of the other side to count it out. Still more necessary is it for him to have all his followers ready for the divisions. For the enemy is treacherous, and may plan a surprise, and call a division unexpectedly. The Whip must act as watch-dog, and not allow members who want to dine out to leave the House. In any event he must know where to find them in case of need, and be able to warn them by telegram or by special messenger. The fate of a ministry sometimes depends on the accuracy of his information of this kind, and on his rapidity of action. To prevent the debate from languishing the Whip must have a reserve of fluent speakers who can talk by the clock to enable those who are late to come in time for the division. The Whips of both parties often have to come to an understanding, as the parliamentary play is a piece with two *dramatis personæ*. On great field days they settle the order in which speakers are to address the House, fix the number of sittings to be devoted

Further inducements to good discipline are afforded by the official publication of the division lists, and by the fact that absence from important divisions is keenly noted by the London and local party papers, as well as by the party organisations in the constituencies.

As we have remarked, the Opposition has a like organisation of "Whippers in"; the possibility of taking an unwary adversary by surprise and forcing the resignation of the Government has, in their case, the most stimulating effect.[1]

A very important duty which falls to the Whips is the arrangement of "pairing." The rigorous discipline as to attendance has led to efforts being made to deprive absence from a sitting, or part of a sitting, of its chance character, by arranging that the absence of a member from one side of the House shall be balanced by a simultaneous absence of another member from the opposite side; in this way the proper relation between the parties is, as far as possible, maintained. Pairing in the House of Commons has become a minutely regulated institution, and it is regarded as a serious failure in political duty to go away, even for urgent private affairs, without finding a pair. A breach of the promise, implied by a pair, to remain away from the House would be so flagrant an act of personal and political impropriety that it need not practically be taken into account. The arrangement of pairs is part of the Whips' business. When a session has lasted a long time it is often difficult, of course, to find a partner from the other side for every member who is anxious to be gone; but, thanks to routine and to the personal familiarity of the Whips with members, the machinery of pairing works for the most part smoothly and to everyone's satisfaction. The effect of

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to the debate, &c. The performance of these duties requires uncommon suppleness, but is compatible with perfect honesty in our day." ("Democracy and Organisation of Political Parties," vol. i., p. 138.) Sir Wilfrid Lawson gives his constituents an amusing account of the doings of the Whips under the Liberal Government, and the gradation in the urgency of their written appeals. See *Jennings*, "Anecdotal History of Parliament," p. 600.

[1] Since there has been an independent Irish party it also has had Whips, and the Labour party in the 1906 parliament has also appointed Whips.

the practice on the whole of parliamentary life is to render it possible to carry on the ordinary business of Parliament with comparatively small contingents on the two sides; members can therefore find the time necessary to fulfil their private engagements, and it is possible to save their strength and to induce them to attend willingly upon political field days. Lastly, it has the advantage of giving greater firmness to the apparently—only apparently—unstable ground of parliamentary party government.

It has been already remarked that there is a profound difference between the political parties of England and those of Continental states. There can be no better illustration of this than the way in which the elaborate parallelism in the parliamentary arrangements of the two great parties in the House of Commons is applied to bring about a permanent organisation for the maintenance of a constant understanding between Majority and Opposition, and even for common work in the interests of the state. This remarkable phenomenon casts a vivid light upon the inmost character of English parties, and will not in the least harmonise with the lurid pictures, which most German constitutional teachers of the nineteenth century and many German politicians have been accustomed to paint, of "party rule" and the dangers of unbridled "party tyranny." Assuredly it must not be forgotten that the successes of party and party government in England are due to their historically developed nature, which has made them, at the same time, state parties and national parties. That this could come about depends, as we have seen, on elements rooted deep in the national character; but these national characteristics could never have matured except as the fruit of centuries of political education, which in its turn has only been made possible by strict adherence to and development of the principle of self-government.[1]

[1] See *supra*, vol. i., pp. 125–132. *Lothar Bucher* was one of the first to arrive at a correct understanding of English party affairs. In the fourth chapter of his book, "Der Parlamentarismus wie er ist" (1854), there are a number of discriminating remarks on English and Continental parties. It is no doubt true that Bucher, writing from the standpoint of one disappointed with parliamentary government, often criticises in a biassed manner, generalises from temporary appearances, and, in his dislike of England,

Historical Note as to Attendance at the House[1]

At all periods of its history, the attendance in the House of Commons has been irregular, often very poor. With respect to the mediæval parliaments it appears from Prynne's study of the writs *de expensis*—the writs to the constituencies directing payment of the wages of their members—that the borough members often stayed away in great numbers, so that only a few of the borough writs exist; on the other hand, the completeness of the county writs affords a proof of the constant and zealous attendance of the knights of the shires. It has, however, from early times been a principle of parliamentary law that it was the duty of every member to be present. Absence could only be justified by a license to stay away, to be obtained from the House or the Speaker.[2] Anyone who absented himself without such an authorised excuse was technically guilty of a contempt and incurred the penalties consequent thereon.

The oldest method of increasing the attendance was the institution of a *call of the House*, the calling over, name by name, of the roll of members at a time fixed by order of the House for some subsequent day. The interval between the order and the call varied in the course of centuries from five days to six weeks. If any member were absent without leave on the appointed day, that is, did not answer to his name, he was regarded as a defaulter and punished. The most ancient, and at the same time the most severe penalty for such a fault was a direction by the House to the Serjeant-at-arms to arrest the deserter.[3] The earliest authenticated instance of a call of the House occurred upon the 16th of February 1548–9, but there can be no doubt that the usage goes back to mediæval times. As a rule a call was ordered when a large number of

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often arrives at distorted and unfair conclusions. But the recognition of these faults should not prevent a full acknowledgment of the acuteness and power of observation possessed by this remarkable man. In reading Lothar Bucher's works it must never be forgotten that he was himself an outspoken, not to say passionate, party man, and that he never took a side more eagerly than in the fight against Mr. Gladstone's England and the advance of democracy.

[1] *Hatsell*, vol. ii., 3rd edn., pp. 90–95; 4th edn., pp. 96–101; *Scobell*, "Memorials," p. 84.

[2] See the interesting list of leaves of absence in *Hales*' "Original Jurisdiction of Parliament" (London, 1707), pp. 190, 191. The small attendance is proved by the numbers upon divisions, found in the journals, and by the smallness of the majorities. This is especially noticeable in Charles II's parliaments, in which the penalties for non-attendance kept being increased while at the same time the opposition between Court party and Country party became strongly marked. See the examples given by *Parry*, p. 567, note (*k*), p. 569, note (*l*), p. 573, note (*o*), p. 578, note (*q*), &c.

[3] Instances appear in the authorities on the 7th of March, 1676–7, and the 11th of December 1678. In 1554 a noteworthy attempt was made to obtain judicial punishment of members who absented themselves without leave; it did not meet with success. The incident occurred, it must be remembered, during the time of the fierce persecution of Protestants by Queen Mary. (*Parliamentary History*, vol. i., 625.)

members had absented themselves permanently from London. At times (*e.g.*, in 1693) the Speaker sent to the sheriffs, along with the announcement of the date of a call, letters directing them to summon all members who were stopping in their counties to attend without fail on the appointed day.

Probably even in early days the extreme penalty of placing members under arrest was rarely put in force; still Hatsell, who looked upon the custom as antiquated, quotes a case in his own day, on the 15th of February 1781. The following were regarded as adequate pleas for excusing punishment:—*Servitium regis*, illness, special permission, or any reason which had been declared sufficient by the House. Only those members whose absence was not satisfactorily explained by a colleague were marked as deficient and put upon the defaulters' list. Taking it altogether, the expedient of a call of the House, though frequently adopted in the sixteenth and seventeenth centuries, does not seem to have been particularly successful. The threat of imprisonment was one which could not be carried into execution against any large number of absentees; it was soon found advisable to use another means of persuasion, namely, fining. The most ancient form of money penalty for bad attendance was deprivation of salary. As early as Edward I's day, in 1344, the representatives of the counties of Oxford and Gloucester (amongst others) were left without writs, possibly, Prynne suggests, "because they neglected their work."[1] A statute of Henry VIII, which very soon became obsolete, enacted that members should not depart until the session be ended without license of the Speaker, under pain of forfeiture of their wages (6 Henry VIII c. 16). When wages ceased to be paid, as they did during the course of the seventeenth century, this method of penalising members who would not attend regularly fell to the ground. From that time the House repeatedly prescribed money fines for unlicensed absence. On the 18th of March 1580–1 the House resolved "That every knight for the shire that hath been absent this whole session of Parliament without excuse allowed by this House shall have . . . twenty pounds for a fine set and assessed upon him . . . and for and upon every citizen, burgess or baron for the like default ten pounds" in addition to loss of wages. Considering the high value of money at the time, the penalties were very heavy—if they were exacted. On the 12th of July 1610, the Commons resolved that all absent on calling the House should pay, knights 6*s.* 8*d.*, burgesses 3*s.* 4*d.* Penalties for lateness were prescribed. On the 1st of May 1641 it was ordered that all members coming after eight should pay 12*d.*, and if absent the whole day 5*s.*, unless with license. On the 5th of May 1641 it was ordered that "All members of the House that are about town and not sick shall appear to-morrow at eight of clock, and their not-appearance shall be accounted a contempt to this House, upon which this House shall proceed as against a person not worthy to sit here."[2] On the 12th of November 1640 the House

[1] *Prynne*, "Parliamentary Writs," 4th part, p. ii.

[2] *Townsend*, "History of the House of Commons," vol. ii., p. 364. *House of Commons Journals*, vol. i., pp. 131, 135. We see from an order of the House in 1566 (*Journals*, vol. i., p. 76) that this punishment was no novelty: "Ordered that if after the reading of the first bill any member depart before the rising of the Speaker, without license, he shall pay 9*d.* in the poor man's box."

resolved that whoever left the House before the Speaker should pay a fine of 10s.[1]

The first parliament after the Restoration took the matter very seriously: on the 21st of April 1662 an order was made that all members should attend personally on the 5th of May, under a penalty of £20. In 1670 (20th December) it was ordered that any defaulters on the 9th of January then next should be doubly assessed in the bill of subsidies. The House repeatedly (*e.g.*, in 1692) ordered that no member should go out of town without leave,[2] or that the doors of the House should be locked.

All these and similar punishments and commands, as we may infer from their frequency, had but little success: we can gather the same from the solemn words in which the famous historian of the Rebellion, Clarendon, refers to the mischief.[3] The difficulties of travelling, both by sea and land, were cogent reasons, far into the eighteenth century, for late appearances or even for absence. Bentham, in his remarkable "Plan of Parliamentary Reform," turned his attention to the subject, and proposed a kind of automatic penalty on negligence by members.[4] Each member upon election was to deposit a certain sum with the Clerk and to receive back an aliquot part for every sitting at which he attended. The quota for any day upon which he failed to appear might go to those who were present on such day. Probably this device, in spite of its subtly rationalist psychology, would have failed too. Hatsell, who considers calls of the House very useful and important, is on a better track in his criticism of this old parliamentary fault. Referring to the report of a committee appointed in 1744 to go into the question, he expressed his opinion that all external measures for increasing attendance were inadequate, and that the only hope of improvement lay in a sincere desire on the part of members of Parliament to attend to their duties.

In the nineteenth century calls of the House became quite obsolete. The last took place on the 19th of April 1836. Motions to have a call ordered were brought forward on the 10th of July 1855 and the 23rd of March 1882, but both were negatived.

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[1] *House of Commons Journals*, vol. ii., p. 28.

[2] *Townsend*, *loc. cit.*, vol. ii., p. 369. On the 14th of April 1663, the Commons ordered a call of the House "on Monday fortnight, upon pain of £5" for absence. On the 4th of May: "The House was called over and an order made that £5 be collected from all defaulters." (*Parry*, p. 548.) An order of the 13th of February 1667-8 (*House of Commons Journals*, vol. ix., p. 49) provides: "That every such member as shall desert the service of the House for three days together without leave . . . nor offering sufficient excuse" shall pay a fine of £40. In 1689 a fee of 5s., payable to the Clerk of the House, was even imposed on members going away from London during the session with leave of the House (*House of Commons Journals*, vol. x., p. 130.)

[3] *Clarendon*, Book iv., s. 74 (Macray's edition, vol. i., p. 427).

[4] *Bentham's* Works, vol. ii., pp. 324 *sqq.* "Essay on Political Tactics," ch. iv., § 5, and vol. iii., p. 544, "Plan of Parliamentary Reform."

CHAPTER II

The Social Structure of the House of Commons

NO account of the forms of English parliamentary government or of the procedure of the House of Commons would be complete without some reference, even if it must be short, to the personal character of the House, the *social* structure peculiar to it as a body. It stands to reason, without elaborate proof, that both the internal working and the external attitude of any body are determined to a greater or less degree, often indeed chiefly, by the social status of its members. Further, the development of the functions of any legislative assembly as a whole, the spirit and direction of its action are to a certain extent determined, in the first instance, by those qualities, each by itself almost indefinable, which, taken together, may be described as the national character of the people or peoples which it represents. There are, however, other factors the far-reaching influence of which upon the life of a representative assembly must not be under-estimated. It is material to know which social classes furnish the most numerous and which the most influential members; and in what proportions the different ranks and professions in the nation take an active share in parliamentary life; even the composition of a parliament in respect of age cannot safely be disregarded. Many decisive traits in a parliamentary system can only be rightly grasped by the help of an acquaintance with the personal and social assumptions under the influence of which they have been formed and to the continuance of which they have largely to trust for their maintenance. Especially are the nature of the English system and the procedure by which it is carried on, with their insular and unique development, inextricably interwoven with the characters of the men who have from time to time been members of the Parliament of England.

Following the frequent indications which have been given in Book I, we start from the fundamental position that down

to the present day the historically attained *aristocratic* character of the English representative assembly has never been really lost. This is, for our purpose, the essential and vital fact, though it must not blind us to the great changes which have taken place during the last hundred years, and the result of which may perhaps be best summed up in the statement that the House of Commons is to-day, in its social character, frankly a delegation from the whole of the propertied classes of the land. But this remark needs some further elucidation.

It seems obvious that the social character of the House of Commons, like that of every elected assembly, must depend above all things upon the suffrage by which it is chosen. One is disposed to assume in advance that a suffrage which embraces large classes of the population, and *a fortiori* one which is universal, equal and direct, will inevitably bring into the ranks of the legislative body many representatives of the numerous classes. A glance at the actual conditions in present-day parliaments will, even on casual inspection, reveal that nowhere has this consequence followed to the extent that might have been expected ; that in different countries the extension of the franchise has had only a comparatively weak effect in democratising the representation of the people. It need hardly be pointed out that in all states, though with widely different degrees of force, the pressure of social and economic conditions must act as a powerful brake upon this tendency, even though the law may give absolute equality to all persons as regards voting and eligibility. Participation in parliamentary life calls for a total or partial abandonment of the work of earning a livelihood and thus a substantial advantage falls to the share of the higher and financially independent classes. This advantage is considerably lessened, in favour of the poorer elements of the people, by the institution of payment of salaries, though it can never be wholly cancelled.

Of great importance then in the constitution of the House of Commons are the facts that the English parliamentary franchise is, in spite of its wide extension, still considerably removed from being theoretically universal, equal and direct, and that payment of members has been abandoned

for the last three hundred years. Unquestionably both have done much to preserve the aristocratic character of the House which it acquired under the utter want of system and the inequalities of the historic franchise, and which the constantly increasing corruption of the electorate, for more than a hundred years after the Revolution, had until 1832 strengthened and supported. Down to the Restoration the House of Commons may be regarded as having been an assembly truly representative, in the best sense of the word, of the English people in its then social formation. The earliest franchise legislation was admittedly of a restrictive character. When Henry VI prescribed as a qualification for county electors the possession of freeholds to the clear annual value of 40*s*., the intention was unmistakably that of narrowing to some degree the circle of those entitled to take part in elections. But the importance of this qualification must not be exaggerated. The House of Commons under the Tudors and Stuarts was emphatically a body which represented the middle classes in town and county, and was by no means a preserve of the aristocracy. We have eloquent testimony to this effect in the continuous growth to predominance in Parliament of Puritanism, which sprang from the middle and lower classes of the nation and was the religious counterpart of the democratic conception of the state in the sixteenth and seventeenth centuries.

The faithfulness with which Parliament then reflected the average feeling of the nation was a result of the economic and social structure of England in those days, above all of the distribution and division of land during the sixteenth and seventeenth centuries. On the other hand, it is highly instructive that the first parliament after the Restoration received the nickname of the "Pensioners' Parliament." This title was given to it by reason of the large number of members brought in by royal influence and dependent upon royal bounty. The change in the personal character of the House was beginning: after the victory of the Whig nobility at the time of the Revolution it became more marked and produced pregnant constitutional effects in the growing influence of peers and Government upon the representation of many constituencies.

At the same time (*i.e.*, about the end of the seventeenth century) an alteration of another kind, no less characteristic, began to appear in the membership of the House of Commons. From the middle of the eighteenth century, England's growth as a Colonial power, and still more her conquest of India, brought the influence of the newly-formed capitalist class to bear upon the House of Commons—an influence strengthened from about the last quarter of the century by the great development of home trade. Indeed the pressure which finally led to the Reform Act came, first and foremost, from these elements in the rising middle class; and to the middle class alone did the Act of 1832 open the doors of Parliament, till then wholly dominated by the landed aristocracy.[1]

The caution with which the franchise was extended by the first Reform Act had the effect of preventing any change in the social character of the House of Commons beyond the inclusion of this new class. The period from 1832 to 1867, the heyday of modern parliamentary government in England, saw the rapid and complete amalgamation of the youthful Industrial interest with the old Landed interest: the latter has recouped itself for its political and economic defeat in 1846 upon the Corn Laws by taking its full share in the mighty nineteenth century wave of industrial and commercial expansion. In a word, the House of Commons remains still, to a great degree, under the influence of the historic aristocracy, because that aristocracy has, gradually but completely, joined forces, socially and politically, with the prominent leaders of modern capitalism. The fact that the peerage always opens its ranks and gives a free welcome to new members who have attained to leadership in the development of the nation's wealth or culture, plays as important a part in this movement as the restriction of the inheritance of nobility to the eldest son.

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[1] The story of the concentration into a few hands of the disposal of the great majority of the seats has often been told since the days when English Radicalism first launched its accusations and, for example, exposed the inner mechanism of the parliamentary oligarchy in the famous "Black Book." According to *Oldfield* ("Representative History," 1816, vol. vi., p. 293) out of 489 seats in England and Wales no less than

The franchise reforms of 1867 and 1884, which gave votes to the urban and rural working man, and thus by stages led to a democratic suffrage, made but little difference to the mixed plutocratic and aristocratic character of the House as established in the middle of the century. At each extension of the franchise the members of the upper classes, already favoured in the competition, even when conditions were otherwise equal, put out their full strength in the effort to control the composition of the House of Commons. The possessors of wealth have had an enormous advantage placed in their hands by the heavy cost that candidature and election always involve. In this respect, too, there has no doubt been a progressive reform since 1832. Above all, the severe laws against bribery and corrupt practices have put a strict limit upon the sums spent on influencing voters, which had often bordered upon the marvellous.[1] But, even now, the expenditure which is still permitted by law seems, to anyone with Continental ideas, extremely heavy.[2] Each candidate is bound, under the provisions of the electoral law (38 & 39 Vict. c. 84) to deposit with the returning officer, or to give security for, a sum varying with the size of the constituency; the total amount (which has to be shared equally among all the candidates) varies from £100 to £1,000: if any candidate's share is not provided for, his nomination falls to the ground. This amount, which goes to defray the official costs of the election, is, however, in most cases only a small fraction of what may legally be spent upon the conduct of an electoral campaign. The possession of considerable resources is therefore necessary for anyone who proposes to enter into

371 were in the hands of patrons; 87 peers disposed of 218 constituencies, 90 commoners had the filling up of 137 seats, the Government of 16.

[1] The law is now consolidated in one statute, viz., the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51). See the author's work on Local Government, English translation, pp. 291–301.

[2] In 1868 the expenses of the general election came to about £1,400,000, according to a parliamentary return; in 1880 the sum spent was estimated by one of the ministers in the victorious party at £1,700,000 (*Franqueville, op. cit.*, vol. ii., p. 479). After the passing of the Act of 1883 the total expenses of the general election of 1885 sank to a little more than £1,000,000, in spite of the large increase in the number of electors.

a contest for a seat in the House of Commons. Of late years the great workmen's organisations have not hesitated to produce funds for workmen's candidatures; but the heavy expenses of elections must still be regarded as a factor which tells materially in favour of the rich.

Independently, moreover, of financial considerations, it is an experience equally remarkable and unquestionable that the ever widening electorate in England has always preferred to give its votes to leaders of society, and still prefers to do so. This is a fact much more effective in maintaining the historic structure of the House of Commons as a body than any of the other causes adverted to—the limitations on the franchise, the high cost of elections, and the non-payment of members. We have here one of the fundamental characteristics of English political life, intimately bound up with the national way of looking at things; that it is of a general character may be seen by noticing that the same observation applies to the recently created town and county councils.[1] The English working classes have, as a rule, down to the most recent times preferred to leave their economic interests to be championed in Parliament by members of the governing classes, and, as they have become more conscious of the power of their numbers, have devoted their energies to modifying in their own favour the programmes of the two historic parties. To the present time the English masses

[1] See *Redlich* on Local Government (English translation), pp. 278, 279, as to the parallel in local affairs. No less an authority than Mr. Gladstone has discussed the deep-seated basis of this phenomenon. In an article (*Nineteenth Century*, November 1877) in which he foreshadowed the latest franchise reform, he refers to the political doctrine of the equality of all men in the following terms: "There is no broad political idea which has entered less into the formation of the political system of this country than the love of equality. The love of justice, as distinguished from equality, is strong among our countrymen; the love of equality, as distinguished from justice, is very weak. It was not the love of equality which induced the working men of England to struggle with all their might in 1831–2 for a Reform Act which did not confer the vote upon their class at large. . . . It is not the love of equality which has carried into every corner of the country the distinct undeniable popular preference, whenever other things are exactly equal, for a man who is a lord over a man who is not. The love of freedom itself is hardly stronger in England than the love of aristocracy; as Sir William Molesworth—himself not the least of our political philosophers—once said to me of the force of this feeling with the people; 'It is a religion.'"

have been indifferent whether Whigs or Tories undertook to work for the promotion of laws benefiting the labourers, the democratising of administration or the improvement of their social and political position : they have not attached much value to being represented by members of their own class, so long as their interests were being attended to.[1]

It is in this way that the remarkable phenomena, to which I have alluded elsewhere, have made their appearance—the levelling of party divisions between Liberals and Conservatives, the extremely small number of Labour members in the House, the absence of any outspoken class policy on the part of an Independent Labour party within or without Parliament. The standing aside of the working classes in the competition for seats in the House has had an important result, so far as the immediate subject of discussion is concerned : it has allowed the personal character of the House of Commons to be preserved. In so doing, it has provided an indispensable basis for the retention of the English parliamentary system as it has come down to our day ; it has left the personal and social support of the national system of government to those on whose traditional co-operation rest the conventions of parliamentary life and the spirit of parliamentary practice and tactics. We may go further and say that the maintenance of the conventions, which during the eighteenth and nineteenth centuries transformed the English

[1] This idea is strikingly expressed in a letter by the well-known Fabian politician and author, Mr. G. Bernard Shaw, printed in the "Labour Annual, 1900." A circular was sent out inquiring from him and other Socialist politicians what course of action at the forthcoming general election he would recommend to the workers to enable them most speedily to accomplish the objects for which they were organising, such objects being summarised in the circular, by reference to John Stuart Mill's words, as "a common ownership of the raw material of the globe, and an equal participation in the benefits of combined labour." He wrote in reply, "I am greatly surprised to hear that the workers are organising for the object stated by John Stuart Mill. In fact, I am sorry to say I don't believe it. In the south of England and London, at all events, the workers have learnt that their immediate interest is to have plenty of rich people—the richer the better—to spend money generously among them. The fact that this money is made out of the labour of other working folk in distant factories does not trouble them at all. And the factory folk seem equally satisfied. They return their employers to Parliament with the greatest enthusiasm." (*Labour Annual*, 1900, p. 27.)

constitution into an unconditional parliamentary government and which have created modern English constitutional law, would have been impossible but for the continuance in power of the class which brought them into existence.

One consequence of the leadership in government and politics being left to the aristocracy and the capitalists, is that the system of party government has a tendency to become one of government by "amateurs," a tendency of late years increasingly noticed and lamented in England. For the body from which English ministers are all recruited, Parliament, is, with few exceptions, as yet free from professional politicians in the strict sense of the term.[1] The last few years have, no doubt, brought some signs of change; there are indications that powerful personages, especially among the financial capitalists, are, as in the days of George III, becoming desirous from selfish motives of taking an active share in the work of the House of Commons; it is also doubtless true that the often very real social advantages which accompany the possession of a seat in Parliament, are looked upon as at all events some compensation for the heavy expenses of obtaining it. But the House of Commons, especially so far as concerns its leaders, is still a preserve for the well educated sons of the "leisured classes" who have business capacity or possibly mere wealth, and who take up politics from motives of ambiiton; in many instances they lay aside a career with much more promise of material gain and adopt political life as the highest privilege of citizenship, regarding the attainment of great office as a gratification of the desire for power, but using it for no purposes of selfish material advantage.[2] All these circumstances lead to the maintenance of the oligarchic character of British ministries even in the days of triumphant democracy. The two last decades with their almost unbroken

[1] The strict exclusion from Parliament of all members of the Civil Service, which in the nineteenth century became of such high administrative importance, is a significant feature of the same kind.

[2] The ordinary salary of a minister—except in the case of the law officers and the Lord Chancellor—is, when the standard of life even of the upper middle class is taken, far too small to induce anyone to undertake a political career for the chance of office. To a successful London barrister the acceptance of office involves a serious loss of income.

record of Conservative rule have shown this very clearly. The whole *personnel* of the Government, with but few exceptions, still belongs to the old families or to the well-established rich families of more modern times; and at least one-third of every Cabinet consists of members of the House of Lords.[1] Compared with the mass of the population of the country, all the social elements represented in the Cabinet, taken together, form but a small circle of *haute politique.*

It would, however, be a mistake to overlook the changes which the slow but continuous progress in a democratic direction of the right to vote, and, indeed, of the whole of public life, has had upon the general c onformation of the House. First and foremost we must mention the Irish Nationalist party, the Home Rulers, who, as we have seen, gave the final impulse to reform in the rules of business. The Irish party is poles asunder from the other parties, not only politically, but socially as well. In Ireland the unjust franchise laws, the exclusion of Catholics from all power and the possession of enormous estates by members of the English nobility had at one time made the parliamentary representation of Ireland the exclusive possession of the aristocracy; in 1832 their power began to wane, at first but

[1] Take, for example, the analysis according to professions, of Lord Rosebery's Government, given by *Sidney Low, loc. cit.*, p. 191 :—

Earl of Rosebery	Peer and wealthy landowner.
Earl of Kimberley	Ditto.
Marquess of Ripon	Ditto.
Lord Tweedmouth	Ditto.
Earl Spencer	Ditto.
Lord Herschell	Successful lawyer.
Mr. Asquith	Ditto.
Sir H. Campbell Bannerman.	Son of a wealthy manufacturer and landowner.
Sir William Harcourt	Member of ancient and aristocratic county family.
Sir George Trevelyan	Baronet and head of old county family.
Sir Henry Fowler	Wealthy solicitor.
Mr. John Morley	Journalist and man of letters.
Mr. Arnold Morley	Son of a very wealthy manufacturer.
Mr. James Bryce	Distinguished jurist and professor.
Mr. Shaw Lefevre	Landowner, nephew of a peer, and connected by marriage with another noble family.
Mr. A. H. D. Acland	Member of an old county family.

slowly, but finally at a single stroke the full democratisation of the membership was effected. The Irish Nationalist members are socially a faithful embodiment of their constituents, the peasants, the working classes and the Home Rule intellectuals. The party is fully conscious of its social difference from the historic parties in the House, and at times this feeling has found expression in debate with all the bitterness that such social distinctions produce.[1]

There are, too, unquestionable beginnings of the formation of a separate Labour party, as recent events have shown. There can be no doubt that in the last few years the most superior sections of the working classes, organised in the trade unions, have shown a desire to be represented in the House of Commons by as many of their own class as possible, and to hold aloof both from Liberals and from Conservatives. It remains to be seen whether this tendency will be permanent or successful, and whether it will affect the social character of the House in a more strongly democratic direction: the further question, too, awaits an answer, whether the attempt to form a Labour party, as a third amongst the non-Irish parties in the House, will meet with any better success than earlier efforts on the part of the Radical wing among the Liberals. The present position of English politics, produced by the introduction of the question of Protection, displays the situation, so well known to the historian, of disorganisation and simultaneous regrouping of the whole party system on the lines of the new great battle cry. But this very movement shows once more the persistent inclination amongst Englishmen to convert their politics into a struggle between two great parties divided by their opinions on one single decisive question. To a critical onlooker there is nothing yet to indicate that these circumstances are favourable to the attainment by the working men of town and country of a position as a new parliamentary unit.[2]

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[1] See the debate of the 7th of February 1902, upon the discussion of the new standing orders, with the numerous bitter references to a remark of Mr. Chamberlain's.

[2] One consideration that gives rise to difficulties in the way of independent working men's candidatures is the absence of a second ballot.

A glance at the present composition of the House will confirm what a Conservative member remarked in a retrospect of the last decades of the nineteenth century—that nothing (except youth) so much contributes to an entrance into public life and to success in the House of Commons as aristocratic connections.[1] It would be even more correct to say that the House of Commons is still almost entirely reserved for those sections of the population which are under the control of the aristocracy and plutocracy and are economically powerful.[2] Of course, it must be remembered that in England the ruling classes are continually receiving recruits to their membership from below, that for some generations the English aristocracy has been based mainly

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It is an old political experience in England that a "three-cornered fight" increases the chance of the Conservative candidate.

[1] *Temple*, "House of Commons," p. 81. The above statement refers of course to the parliament of 1900–1905. In its successor the "Labour" members are much more numerous.

[2] The following statistics, taken from *Dod's* "Parliamentary Companion, 1904," will be the best proof of the statement made above. Among the 670 members of the House were to be found:—119 lawyers (21 K.C.'s, 60 other barristers, 22 solicitors, 9 ministers who were K.C.'s, several of the remainder ex-judges), 77 large manufacturers, 11 railway directors, 22 shipowners and marine engineers, 29 bankers and stockbrokers, 12 mineowners, 52 merchants, 18 newspaper editors and proprietors, 15 journalists, 6 doctors, 7 authors, 7 professors and schoolmasters, 54 military and naval men, 10 former diplomatists and civil servants, 26 landed proprietors, 47 country gentlemen. The last named would represent the landed interest, together, no doubt, with a large proportion of the 100 members whose professions are not given. In the case of 15 other members it is simply noted that they are eldest sons or heirs presumptive of peers: but the number of sons and nephews of peers included among the professional list is much greater. There are 15 members of the Government to whom no previous profession is assigned. As against all these members we have 12 retail traders and about as many working men. Of the last named, almost all are secretaries of trade unions, and by no means belong to the proletariat. The foregoing figures are merely approximate: from the indications given it is often possible to reckon a member as belonging to more than one class. But any such errors do not affect the general accuracy of the picture. A further indication of the strength of the aristocratic element is the large number of knights and baronets. The notes as to the careers of the members show a very large proportion to have been at the public schools and universities. "Taking the assembly as a whole," says *Sidney Low* (*loc. cit.*, p. 183), "its composition is pretty much what it was twenty, thirty, or fifty years back . . . . an assembly of persons who had either made or inherited a fortune, or who were connected with the landed and territorial classes."

upon plutocratic foundations, and that new forces and new elements from the mighty world-embracing commercial life of the country are continually being absorbed without reserve into the "Governing Classes." It is from this point of view that we can best grasp the importance of one factor in English parliamentary life and the whole of English politics, which is well understood in England, but often passes wholly unobserved abroad, where the institutions of the Island Kingdom are judged by theory only; the effect, that is to say, produced by "Society." It is very easy in Germany to overlook the influence of this factor, as in German political life it has hardly any counterpart. It may perhaps appear to many a teacher of constitutional law inconsistent with the dignity of science, not merely to recognise, but even to enter upon a serious analysis of the effect upon the life of the state produced by this element with its mixture of all the weaknesses, both small and great, of human nature. But it must be done if we are to grasp the anatomy and physiology of English public life in its entirety. Here we must content ourselves with indications only. London Society with its "season," which in the main coincides in time with the sittings of Parliament, brings together in the capital the highest stratum of the governing classes; it is the sum of the strongest social powers not only of England, in the widest sense, but of a much larger sphere. A recent German observer of England, Dr. Karl Peters, has strikingly pointed out how London Society is an important bond of union between the wealthy and governing classes of the mother country and the corresponding classes in the far off colonies, even bringing in the plutocratic and aristocratic social elements of the United States of America. But for England itself the political importance of Society lies in its indefinable capacity of amalgamating new persons and families who have risen from below with the old families of the land and with those who have been absorbed a generation or two ago. No doubt this capacity and its effect depend upon the fact that an effort on the part of the "new arrivals" to unite with the aristocracy or plutocracy is also a trait in the national character. That this is the case will be no news to anyone who has once heard of

the English fault of "snobbishness," so often denounced by Continental observers. However that may be, the maintenance of the old aristocratic basis of English parliamentary life in the days of the victory of democracy must be ascribed in a not immaterial degree, though of course not wholly, to the political influence of Society, an influence which in the present day has increased rather than diminished. It would lead us too far from our course to trace the effect of Society on the inner life of Parliament, especially in the narrowing down and formation of the circles of leaders and of members of the Government; in spite of the undeniable interest of the phenomenon we cannot dwell upon it. There is little doubt that this influence has been on the increase during the last twenty years, and that the more and more strongly displayed plutocratic tendency of Society constitutes a feature in the picture of modern England which calls for little admiration. Men like Sir Robert Peel, Mr. Gladstone, Lord Beaconsfield, produced effects in Society as "born leaders" through the power and greatness of their personalities, without sacrificing anything to the weaknesses and prejudices of Society; and a man like Mr. Joseph Chamberlain has his way by dint of his political will power and his genius for agitation. But it is to be feared that such cases are less numerous than those in which English Society fails to make a "selection of the fittest." At all events it must not be overlooked that many social levers and forces are at work powerfully affecting the personal composition of the House of Commons and greatly influencing what, in the age of the strictest Cabinet government, may be looked upon as one of the most important functions of the House of Commons—that of a machine, corresponding to national modes of life and thought, for selecting and promoting the most capable men, those who are called by nature to rule and to conduct the government of the country.

It must not be forgotten, either, that the modern plutocratic nobility of England, like the old aristocracy, always holds the door open to members of the liberal professions, even though they may not be wealthy, and that, on the other hand, the younger sons of noble territorial families

inherit no "places in the sun," but very frequently seek and find their way into Parliament by adopting careers in commerce, manufacture, journalism or law. "It is," says the observer quoted above, "most fortunate for the stability of the realm that the ideas which are truly aristocratic find favour with the British democracy; and this outside tendency is strongly reflected inside the House."[1]

Another noteworthy fact, springing from like causes, is that the House of Commons has always contained, as compared with other parliaments, a large proportion of young men, though the days of boy members have long passed away; almost all great parliamentary careers have been those of men who came into the House at a very early age.[2] The ambitious sons of well-to-do families, who enter early into political life, still form the most important element. Not only were Pitt, Canning, Peel and Gladstone sent to the House as youths, but the leaders of the present generation, Mr. Balfour, Mr. Wyndham, Lord Hugh Cecil, Mr. Winston Churchill, and many others who at this day are eminent statesmen or party leaders. The youthful vigour and receptiveness which have always been found among the members of the House are elements in the secret of the strength of England's parliamentary system: they account, at least partially, for its elasticity and its power of meeting new political situations as they arise.

It is, as has been remarked before, hardly possible to over-estimate the importance of the social structure of the House of Commons in developing and maintaining all the great qualities of the English parliamentary system. For hundreds of years the House of Commons has been a meeting place of gentlemen, and is so still, though it may, perhaps, have lost its claim to be what it used to be called, "the best club in London." Parliamentary behaviour, the

[1] *Temple*, "House of Commons," p. 81.

[2] In the seventeenth and eighteenth centuries many members of the House of Commons were under age. A special clause in the statute 7 & 8 William III c. 25 increased the stringency of the law against the election of minors. In Charles II's Pensioner Parliament there are said to have been members of fourteen and fifteen years old. Charles James Fox was made a member by his father at the age of nineteen. (See *Townsend*, *loc. cit.*, vol. ii., pp. 401–403.)

conception of what is permissible in Parliament and what is not, has, even in the days of growing democracy, suffered little change of character. It has always been developed in harmony with the modes of thought of men who have possessed wealth, education and culture, who have raised themselves to high place in the free competition of professional life, or who have inherited the obligations of a great historic name; such men have been in one way or another brought into living connection with the tradition of the old aristocracy and have acquired from its members the moderation and sense of responsibility, learned during generations of practice in parliamentary government, and indispensable to the maintenance of their pre-eminence.

It is not only the memories associated with a man's own name or the thought of his ancestors which can exercise a truly conservative force upon national life; devotion to duty may equally be inspired by the memories associated with the great permanent institutions of public life, the way to a share in which is both legally and actually open to every individual. The profoundly aristocratic feeling of the English nation brings with it great capacities and powers; with its help it has been possible, in spite of the full acceptance of all the demands and principles of modern democracy, to employ institutions rooted in feudalism in such a way as to preserve the freshness of youth and an inexhaustible political fertility in the great and venerable constitution of the country. All state institutions depend absolutely upon the characteristic qualities of the nation: these qualities at one and the same time support them and provide the material upon which they have to work. No method of legally estimating constitutional principles, without taking into account the national, political and social factors in the life of the constitution, can be anything but a dry skeleton, unable to give any true knowledge of what actually occurs in the state. The true nature of a subject so apparently abstract as the theory of the forms and technique of parliamentary business can only be grasped and properly appreciated when it is treated as the living product of the men who are applying it to their work. Remembering, then, the influence of personal and social factors upon the English

parliamentary system and its practice, we need not feel any surprise that when the political and legal notions expressed in them were adopted by other nations with entirely different traditions they soon were subjected to manifold misrepresentations, strange inferences and misconceptions of all kinds. In a different connection we shall have to consider once more the conclusion which we have now reached, and shall then, perhaps, more fully appreciate its great importance.

PART VI

The Organs of the House

CHAPTER I

The Speaker and his Office[1]

FOR five hundred years the only officer entrusted by the House of Commons with the conduct of its business was its elected chairman, the Speaker. This is no longer the case. But even now there is but one president; the Speaker is the only regular chairman over the deliberations of the House, and its sole representative to the outer world. The other officers who, under certain circumstances, take his place in the chair possess only an authority derived from his and exercisable in the event of his inability to act. They are strictly vice-presidents, and therefore do not form with him a presidential college.

As the history of the office will show, the relations between Speaker and Crown and the relations between Speaker and House have materially altered in the course of centuries. In earlier days, it is true, the position of the Speaker was looked upon by some of his contemporaries very much as it is now regarded; but it has needed a long development to place him securely upon his pinnacle and to make his office a synonym for dignity and impartiality all over the Anglo-Saxon world.

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[1] References: *May*, "Parliamentary Practice," pp. 191–195, and *passim*. *Manual* (1904), p. 22; *Lummis*, "The Speaker's Chair"; *MacDonagh*, "The Book of Parliament," pp. 115–132; *Denison*, "Notes from my Journal," London, 1900; *Sir John Mowbray*, "Seventy Years at Westminster" (1900), pp. 115–119; Report of the select committee on the office of the Speaker (1853); *Parliamentary Debates* (107), 1020–1050; Speaker *Gully*, Address to the electors of Carlisle (*Manchester Guardian*, 5th July 1895), and speech (*Standard*, 17th April 1902).

It is difficult to describe the character of the office, impossible to define it in set terms. A mere catalogue, however complete, of the rights exercisable by the Speaker under the unwritten law of Parliament and the standing orders of the House would give no adequate picture of the nature of his high station, or of the dignity which it confers, no presentation of the Speaker's traditional but purely moral eminence, which far transcends all the detailed rules affecting him. The authority wielded for generations by the holders of the Speakership rests more on custom and tradition than on rules, and not until one has deeply studied the debates in the House of Commons and read the accounts of observers of its life at different periods and, even then, not without frequent opportunities of attending the sittings of the House itself, can one form a living conception of its amplitude, and the frank recognition which it receives. This authority is securely based on the Speaker's absolute and unvarying impartiality which is the main feature of his office, the law of its life. The Speaker's impartiality has been won upon two fields. As regards his relations to the Crown it is secured by the act of parliament which forbids his acceptance of any office of profit under the Crown, and by the adoption, about the same time as this act was passed, of the idea, now a matter of principle, that after resigning the chair he ought not to reappear in the House either as one of the Government or as a private member. His impartiality within the House is guaranteed by a number of arrangements to which other parliaments provide no parallel. Above all, the member of the House of Commons who is elected to the chair ceases, from the moment of his election, to belong to any political party; this condition precedent for the Speaker's impartiality, his exclusion from the conflict of parties, has been an unwritten law of Parliament since the beginning of the nineteenth century. It is true that now, as in former times, the majority always nominates one of its own number in case of a vacancy: but for generations two rules have been strictly observed; first that a Speaker, who does not himself wish to resign his office and quit political life, is regularly re-elected; and secondly, that re-election takes place notwith-

standing that the party from which he came may have become the minority in a new parliament.

As a rule, at a general election, no opposition is offered to the Speaker by the other party in his constituency.[1] In any event the Speaker only offers himself as a candidate by written communications and refrains in his election address from touching upon political questions. Re-election to office by the House is now an established principle; it was only once violated during the nineteenth century. The exceptional case occurred in 1835, when the Whigs, then in the majority, passed over Mr. Manners Sutton, whom they had re-elected in 1832, and chose a Whig, Mr. Abercromby, to be Speaker in his place. Their conduct finds its explanation in the fact that the Speaker himself, during the violent conflicts over the Reform Bill, had failed in observing the strict impartiality required of him, though not, it is true, in the House.[2] For the Speaker then, until he leaves his office and political life, there exists no distinction of party in the House. He has no party to consider or to fear. From the moment of election he discards every outward tie that has hitherto bound him to his party; he refuses to enter a political club, and, both

[1] An exception to this rule occurred in the year 1895, when the Speaker, Mr. Gully, was unsuccessfully opposed by a candidate put up by the Tory party in his constituency, Carlisle. Mr. Gully had shortly before the dissolution been nominated by the Liberals, upon Mr. Peel's resignation, and had been elected by the small majority of eleven votes. This may perhaps be considered to justify the breach with tradition made by the Tories. Still, the majority on both sides disapproved of the line of action taken. Though the Conservative-Unionist party had in the meantime gained a majority, Mr. Gully was, as a matter of fact, unanimously re-elected as Speaker, in spite of his coming from the Liberal party.

[2] On all other occasions on which the majority passed from the Speaker's party to the other side (in 1841, 1874, 1886 and 1895) the Speaker was re-elected without regard to the party complexion of the majority. The remarkable result was arrived at that, during the whole of the nineteenth century only three Speakers came from the Tory party—namely, Sir John Mitford (1801), Mr. Charles Abbot (1802–1817), and Mr. A. C. Manners Sutton (1817–1835). The other Speakers were all members of the Whig or Liberal party; they were Mr. J. Abercromby (1835–1839), Mr. C. Shaw Lefevre (1839–1857), Mr. John Evelyn Denison (1857–1872), Mr. Henry Bouverie Brand (1872–1884), Mr. Arthur Wellesley Peel (1884–1893), Mr. William Court Gully (1895–1906). The present Speaker, Mr. J. W. Lowther, was a Conservative.

within the House and without, abstains from expressing any political opinion. The absolute independence of the Speaker is further secured, in a material sense, by his being provided under act of parliament (2 & 3 William IV c. 105, as modified by 4 & 5 William IV c. 70) with a salary of £5,000 a year, free from all deductions and taxes, and an official residence in Westminster Palace.[1] His salary continues after a dissolution, lasting until the election of a Speaker for the new parliament, and, being a charge upon the Consolidated Fund, it does not come before the House in the estimates. If he retires he is practically sure of a peerage and a life pension of £4,000 a year.

The obligation of impartiality appears in the rules also, in the shape of a legally formulated provision, which has subsisted for hundreds of years, that the Speaker is only entitled to vote in case the numbers on a division are equal, and that in such a case he is bound to vote. A further inference from the idea thus expressed is that it is incumbent on the Speaker to abstain from addressing the House except from the chair in the discharge of his presidential duty : this has been the accepted practice from the eighteenth century onwards. He is, by parliamentary usage, debarred from further exercise of his rights as a member, especially that of speaking in debate. Till the beginning of the nineteenth century it was quite a common occurrence for the Speaker to join in the debates and divisions in committee like any other member ; but for the last two generations there has been no instance of such conduct. It is not only that such intervention clashes with the exalted conception of the

[1] In addition he enjoys some quaint perquisites: he receives a present of wine from the state for his household ; the Clothworkers' Company presents him at Christmas with a piece of broadcloth ; and a buck and a doe from the Royal preserves at Windsor are sent annually by the Master of the Buckhounds. He has, further, an allowance of £100 a year for stationery and receives £1,000 for equipment upon his election (see *MacDonagh*, "Book of Parliament," p. 131). Till 1839 it was also customary to present him with a service of plate ; this was discontinued in deference to the opposition of Hume (*Hansard* (26), 603). A delightful old custom was for the Speaker at the close of each parliament to take away as a memento the arm-chair in which he had sat as president ; this has fallen into disuse since 1832. (See *Pellew*, "Life of Lord Sidmouth," vol. i., p. 68.)

Speaker's impartiality; it renders it possible that he might be called to order by the chairman of the committee, and this is felt to be incongruous with the Speaker's authority over every member of the House.[1] The necessity of giving a casting vote upon a tie has several times been thrown upon the Speaker in recent years. Historians of the British Parliament love to dwell upon the case which occurred in 1805, when Speaker Abbot, being called upon to give a casting vote, decided in favour of a motion for the impeachment of Lord Melville, the last instance of this method of calling a minister to account. May quotes altogether eleven instances in the nineteenth century. From the time of Speaker Addington two principles have guided Speakers in their decisions upon casting votes; they may now be considered as established parts of parliamentary practice. In the first place a Speaker should give his vote, if possible, so as to avoid a final settlement of the question before the House; if there is any way of arriving at such a result, he should give the House an opportunity for reconsidering the matter. For instance, in 1797 Speaker Addington gave his vote, upon a tie, in favour of the third reading of a bill, so as to give the House another chance of arriving at a definite decision, viz., upon the question that the bill do pass. In the second place, when he gives a vote upon the merits, he does so freely according to his own convictions and the dictates of his conscience, first stating the grounds upon which he acts, which are recorded in the journal of the House.[2] Thus in the division upon the Church Rates Abolition Bill, Speaker Denison, in giving his reasons, stated that in his view a

[1] In 1813 Speaker Abbot spoke strongly against a bill introduced by Grattan for relief of Catholics; in 1821 and 1825 his successor, Speaker Manners Sutton, spoke against the repeal of Catholic disabilities (*Hansard*, 1st series (26), 312, 2nd series (13), 434, 435). In 1834 the same Speaker spoke against a bill for admitting dissenters to the Universities; in 1856 Speaker Shaw Lefevre spoke on the management of the British Museum. Since that date there has been only one instance of a Speaker's participation in a committee debate, namely, on the 9th of June 1870, when Speaker Denison spoke against an unimportant, but, as he considered, unjust item of proposed taxation. ("Notes from my Journal," p. 257.)

[2] See *Palgrave*, "House of Commons," pp. 10, 63–65. He describes from his own experience the excitement which used to be felt on the occasion of an equality of votes—in parliamentary language a "tie."

prevailing opinion existed in favour of some settlement of the question different from that contained in the bill; he considered it his duty, therefore, to leave to the future the final arrangement to be made rather than to take the responsibility on his single vote of deciding what was to be done.[1]

The complete aloofness from politics imposed upon the Speaker received its full extension during the nineteenth century, when it came to be considered that he must keep himself free from all political action outside as well as inside the House, even in his own constituency. He is thus the only member of the House of Commons who is not allowed, either in speech or in writing, to advocate the interests of his constituents. The position in which his constituency is placed is accurately described in England as one of practical disfranchisement. The latest historian of the House gives a capital description of the situation in the following terms :— "The Speaker's constituents not only do not go to the poll; they cannot, according to present-day usages, call on their representative to vote either for or against any measure which may be before Parliament. As the Speaker never meets his constituents to discuss politics, one of the chief means of present day political education is lost to them. Political organisation is suspended in a Speaker's constituency; for a present-day Speaker has no need of any local party organisation to secure his return, even if he deemed it proper to contribute to party funds. The newspapers in the constituency have necessarily to refrain from criticism or comment on the parliamentary conduct of its representative; and in nearly all the essentials which go to make representation the constituency is unrepresented. In the constituency represented by the Speaker of to-day political life is dormant; for all its outward activities, as they concern both political education and local political organisation, are suspended. But no constituency complains or frets under its temporary and peculiar political disabilities. It is honoured in the

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See further, as to this, the description by Speaker Denison of the occasion in 1861, alluded to in the text, when his casting vote postponed for several years the settlement of the long vexed question of church rates. ("Notes from my Journal," pp. 95 *sqq.*)

[1] *May*, "Parliamentary Practice," p. 367.

honour done by the House of Commons and the country to its representative."[1]

It will easily be understood that, outside the House, in the purely social sphere, which is so important in English political life, the Speaker's rank is universally recognised as of the highest. The whole conduct of his life expresses his exalted position. It is no exaggeration to say that the Speaker presides over a court, and is surrounded by a ceremonial resembling that of a sovereign. He gives a series of set banquets to the House and holds levees to which members are invited in regular succession. A recent English sketch of the office aptly puts it that the Speaker has, in simple truth, many of the attributes of royalty: "He lives in a royal palace. He has his own court, his own civil list, his own public household. He is approached and addressed with a ceremony and deference such as is shown to royalty. . . . He represents in his proper self the rights and privileges of all his subjects. In his own sphere his word is law, and, should that law be broken, he keeps his own officer to convey offenders to his own prison. His functions, multifarious as those of sovereignty itself, include many of a stately or ceremonial kind. He wears his own proper robes, which it is not lawful for other men to don. His sceptre is borne before him—the mace of the most honourable House over which he rules; upon his head reposes his peculiar crown, the Speaker's wig, and just where the throne stands in the House of Lords we find in the House of Commons the Speaker's chair." "Who shall deny," asks our author, "that Mr. Speaker is, in every sense in which it were not treason to call him so, a king?"[2] The high conception of the Speaker's position, so admirably described in this passage, is of course obvious in all state ceremonials. As "first commoner" in the realm his place is immediately after the peers, and at all times he is at liberty personally to approach the wearer of the Crown in the name of the House and to report its desires. It is only under his conduct, not as individuals and by themselves, that the members of the House of Commons have any right

[1] *Porritt*, "The Unreformed House of Commons," vol. i., p. 481.
[2] *Lummis*, "The Speaker's Chair," pp. 6, 7.

to appear before the King to lay their wishes before him by word of mouth. All this faithfully kept ceremony is, however, only the outward sign, used by the conservative and symbol-loving sense of the nation, to express that the Speaker is to the outer world what he is legally appointed to be in the House itself, the supreme arbiter and director of the proceedings, raised high above all party divisions; that at the same time in his person the dignity and majesty of the elected representative assembly of the nation are incarnate, that he is the personification of the respect traditionally paid by all classes of the population to the great body in which the self-government of the nation has for centuries found its expression. Within the House, too, the tradition of hundreds of years has surrounded the Speaker with a venerable ceremonial. When he enters or leaves Parliament he is always preceded by the chief executive officer of the House, the Serjeant-at-arms, to whose custody the mace is entrusted; the deferential behaviour of the members towards the Chair also indicates the effort to exalt his peculiar dignity. Breaches of this ceremony by young members are often corrected in a humorous manner, but, to this day, if any member infringes it of set purpose and intentionally fails in due respect to the Speaker, though but in a slight degree, he will be dealt with severely, even to the extent of arrest.[1]

[1] Every member of the House has to show his respect for the Chair upon entering or leaving by making a bow towards it. Members, too, are strictly forbidden, while moving about the floor of the House, to cross the line from the Chair to the member who is speaking. The Speaker himself makes three bows to the Chair before he mounts the raised platform upon which it stands, to symbolise the dignity of the place. We can see from Hooker's report (*Mountmorres*, vol. i., pp. 145, 147) how old these rules are: "When any knight, citizen, or burgess, doth enter or come into the Lower House, he must make his dutiful and humble obeisance at his entry in, and then take his place. . . . If any other person or persons, either in message or being sent for, do come, he ought to be brought in by the Serjeant; and at the first entering must . . . make one low obeisance, and being past in the middle way, must make one other; and when he is come before the Speaker he must make the third, and then do his message: the like order he must keep in his return." *Scobell* (p. 6) states: "No member in coming into the House or in removing from his place is to pass between the Speaker and any member then speaking, nor may cross or go overthwart the House; or pass from one side to the other while the House is sitting." A resolution reported by D'Ewes from the 1580 parliament shows how far

By the common law of England failure in respect or obedience towards any judge is an offence punishable by severe fine and imprisonment, and known as contempt of court. By analogy the offence is extended to the highest tribunal, that of Parliament, and its accompanying penalties protect and support him who presides over the debates of the House, and is the visible embodiment of the dignity of the High Court of Parliament.

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these customs depend upon definite orders of the House. A motion, made by Sir James Croft, "was very well liked of and allowed of all this House . . . that Mr. Speaker and the residue of the House of the better sort of calling, would always at the rising of the House depart and come forth in comely and civil sort, for the reverence of the House in turning about with a low courtesie, like as they do make at their coming into the House, and not so unseemly and rudely to throng and thrust out as of late time hath been disorderly used." (*D'Ewes*, p. 282.)

CHAPTER II

The Functions and Legal Position of the Speaker

WE now propose to attempt a survey of the functions of the Speaker, as constituted by the unwritten law of Parliament, by its standing orders and by the custom of the House, recorded in numerous pages of its journals. We must content ourselves, however, with grouping these functions in certain divisions indicated by the procedure of the House and summarising them briefly. A fuller account of each would lead to intolerable repetition; for each power of the Speaker corresponds to a definite section of procedure, which will in turn have to be dealt with by itself. The office of the Speaker is not a subtly devised creation hedged in by definite abstract rules; on the contrary it has been an organic part of Parliament from the beginning and has grown up and been developed in intimate connection with the changes which its procedure has undergone. This process too is still active. Every material alteration in the arrangement of parliamentary business involves, to some extent, a change in the rights and duties of the Speaker. The great transformation to which procedure was subjected in the last quarter of the nineteenth century gave to the Speaker far-reaching authorities of a discretionary kind such as the historic order of business never entrusted to him.

The functions of the Speaker fall into two chief divisions. In the first place he is the representative of the House of Commons to the outer world, to the Crown, to the House of Lords, and to other departments of the state. Hence the name of his office; he is the spokesman—the Speaker—of the House. As the representative of the whole House, he enjoys in the public life of England the exalted position we have described above; and as such he discharges a series of important and constitutionally defined duties. In the second place he is, unless incapacitated, the sole director of the proceedings of the House, the guardian and warder of the orderly action of the body. The latter function is the

foundation on which his position of right and honour towards the outer world is based, and must, therefore, be considered first.

The Speaker regularly takes the chair at all meetings of the House strictly so called; only at his request, and if and so far as he feels himself unable to preside, have his substitutes, to whom we shall refer later, any right or duty to take his place in the chair. Both when the House is sitting under the presidency of one of his deputies and while it is deliberating in committee the Speaker remains in the building, ready at any moment to appear on the scene.

The rights of the Speaker as chairman constitute in the aggregate what may be called the presidential power. This comprises both authorisations which proceed from the Chair and prohibitions. We will take the last named first.

During the sittings of the House the Speaker alone is charged with the prevention of all interruptions to the discussion, *i.e.*, with the maintenance of order. He alone is authorised to repress any breach of order that occurs, either of his own motion or upon a call (Order! Order!) from some member, and to bring matters back into accordance with the rules. For this purpose he exercises all the disciplinary power of the Chair formulated in the standing orders or given by the unwritten customary law of the House, calling the offending member to order, and in the event of contumacy applying the prescribed form of censure. When a member has spoken insultingly of another member, or has offended the dignity of the House by some other form of unparliamentary behaviour, it is the Speaker who requests the withdrawal of the objectionable words and demands a public apology. When the House has decided to enforce the penalty laid down in the rules for the refusal of such a request, it is the Speaker who pronounces sentence. As we have seen in our historical sketch, the old authority of the Speaker in matters of discipline has been materially strengthened and extended by recent changes in the rules. The most severe punishment for disobedience, one which belongs to the old procedure and corresponds to a committal for contempt of court, is arrest followed by imprisonment; the penalty can, it is true, be imposed only by an express

order of the House, but its execution is left to the Speaker.

The positive aspect of the presidential power comprises in the first place the conduct of the deliberations of the House, and of all the arrangements for the despatch of its business. This covers the whole of the possible action of the House of Commons, with its unrestricted jurisdiction, technically arranged and regulated by the rules. The position of the Speaker is brought vividly into view by the forms which are adopted. All speeches are addressed to him, not to the House. This rule is strictly observed; any formal speaking to the House would at once be checked as a breach of the rules.[1] Further, it is the Speaker alone who calls upon members to speak. It should be clearly understood that the House of Commons has never had, and has not now, any list of speakers. Any member is entitled to address the chair if he can succeed in "catching the Speaker's eye," and obtaining from him permission to speak. In case of dispute the House, not the Speaker, finally decides who is to have precedence. The Speaker, further, has always to see that the daily programme is drawn up in accordance with the standing orders. But the most important function discharged by him, that which gives him his chief political influence, is that of being the sole and final judge of whether any motion or amendment is in order or not. By virtue of the traditional and incomparable authority which is conceded to him by all parties in the House an immense power is thus placed in his hands and, under

[1] This feature of the ceremonial in the House of Commons, which is occasionally misunderstood in Continental parliaments, has its origin in history. It has come down from the times in which the Speaker really was what his name expresses, the *Prolocutor* of the Commons, the interpreter of the will of the House as a whole. In those days it stood to reason that, when discussions took place among the knights and burgesses about the subsidies requested by the King, or the grievances to be laid before him, the chief desire of each member was to make his meaning as clear as possible to the House's spokesman, so that he might know what the wish of the House was. With this object he would always address himself to the Speaker. The practice has long become a form used without reference to its origin: the members who speak address in reality neither Speaker nor Crown, not even their fellow members, but the nation, in the hope of influencing public opinion.

certain circumstances, he may exert a direct influence upon the extent of legislative action.[1]

Of great importance too are his functions upon a division. He alone puts the question to the House, certifies the result, and has supreme control over the often complicated course of the voting. Above all, he regulates the debate, not merely by deciding who is to speak, in doing which he follows the tradition of calling on members alternately from the two sides of the House, but also by seeing that the rules of order are maintained in full force throughout. For this purpose he is entitled at any moment to interrupt a member who is speaking and to say what he wishes; he must always be listened to quietly and without contradiction, and his admonitions must always be obeyed. We shall have to discuss later on the various principles which the rules lay down as to parliamentary behaviour and language. We need only say now that the tradition of centuries, copious almost to excess, has established fixed conceptions and conventions to guide the Speaker in his action. His powers in relation to the debates have never been looked upon as entitling him to express or enforce any completely new or purely personal opinion as to what is on principle allowable in debate or otherwise. The conception lying at the root of English parliamentary law is this, that the rules and the law deducible from the precedents in the journals and from traditional usage are reins by which the action of the House is to be kept in form and order, and that the Speaker is the person who, with firm and cautious hand, is to hold and use them for guiding the House on the lines which have been handed down. It is no part of his office to consider how he may use his power to devise new reins or bridle for the House. The guiding principle is that the Speaker is not the master of the House, but its representative, its leader

[1] Quite recent instances show that it lies in the Speaker's power to exclude certain subjects from discussion for a considerable time, occasionally for a whole session, and thus to exercise a measurable influence upon the fate of a Government. This power is considerably augmented by the extreme subtlety of the rules prescribing the order in which subjects are to be taken up. The subject, together with the most recent case of the Speaker's use of this power for the benefit of the Government, is discussed below in Parts vii and viii.

and authoritative counsellor in all matters of form and procedure. Not that in case of need it is not both right and proper for him to take the initiative, if there is occasion to censure unparliamentary acts or similar behaviour calling for restraint. Only he must always be sure, in all important decisions, and especially in making any change of practice, that he is in accord with the average opinion of the House. In the ordinary course of things, with the abundance of precedents that exist, there can, for an expert on the rules, be very little doubt as to the decision of the Speaker; his task is only hard when he finds himself face to face with a new situation. Even then he must try to deduce his decision logically from rules or precedents which are already in force; the great number of the latter, and the elasticity which necessarily belongs to customary rules, together with the parliamentary training in their interpretation which the Speaker has always had, make the task of bringing new circumstances within the existing law very much easier. No better method could be devised for protecting tradition, upon which indeed the greater part of parliamentary procedure rests, from becoming rigid; it provides a means of taking into account the material changes in conditions that occur during long periods, and of giving authoritative expression by new precedents to new conceptions of parliamentary form and usage. It is perhaps the most difficult and responsible, certainly the highest, of the duties which fall to the Speaker's share. For it assumes that he is familiar with the whole labyrinth of precedents which have been laid down by the practice of centuries, so far as they are not wholly obsolete, and that he is capable, by selecting from them, of finding the best way of proceeding in any new situations which may arise. This duty of the Speaker's, perhaps the most important department of his official work, may best be understood by comparing it with the corresponding attitude of an English judge to the law which he administers. The immense and many-meshed net of the common law with its thousands of decided cases wraps him in its folds, but gives him in compensation thousands of chances to use the unwritten law stored up in precedents for extending the law itself by exposition, even

for creating new law: so, too, is it with the Speaker. Behind the comparatively meagre body of positive enacted rules stretches the wide expanse of century-long parliamentary usage, as recorded in the journals of the House. Here, too, the Speaker has the opportunity of drawing new judge-made law out of the old decisions, a function which must be acknowledged as the highest authority which he possesses.

It must not, of course, be overlooked that, from a purely technical standpoint, the House is the sole and absolute master of its order of business. Its jurisdiction is most clearly seen in its power at any time to alter the rules of business; as we have already remarked, no special procedure, no particular majority is required for this purpose.[1] In point of fact alteration in rules is nowhere subjected to so few difficulties as in the House of Commons. But so long as they remain unchanged, whether they depend on some express order of the House or on customary practice, their maintenance is confided to the Speaker alone; it is his duty to see that they are obeyed, to explain and apply them. In principle the supreme authority of the House is retained; it is clear enough from an express order, made so long ago as 1604, that when precedents are not conclusive the Speaker is to lay the matter before the House for decision:[2] but it is entirely in the Speaker's discretion to judge whether and when to call for such a decision of the House. If he deems it unnecessary to do so, his ruling is final. Among so great a multitude of precedents it can but rarely happen that the Speaker will be unable to find a more or less relevant guide for his conduct without an appeal to the House. It has, as a matter of fact, very seldom happened that a Speaker, instead of giving the ruling of the Chair on his own responsibility, has requested the decision of the House on a special case. And when he has once given his decision there can be no refusal to accept his verdict, nor any discussion of his ruling by the House.

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[1] *Supra*, p. 8.

[2] On the 27th of April 1604, "Agreed for rule, If any doubt arise upon a bill, the Speaker is to explain but not to sway the House with argument or dispute." (*House of Commons Journals*, vol. i., p. 187; *Hatsell*, vol. ii., 3rd edn., p. 227; 4th edn., p. 239.)

It follows, then, that in the House of Commons there can be no debates on questions of order, such as have attained to a melancholy celebrity in Continental parliaments. Any member is entitled, even bound, to bring to the Speaker's immediate notice any instance of what he considers a breach of order, and to ask for the Speaker's explanation upon any obscurities in procedure. To do so it is proper to call attention to oneself by interrupting and to lay the point in question concisely before the Speaker.[1] Occasionally other members intervene with brief suggestions ; but generally the Speaker decides at once : in any event the decision lies with him and his ruling is, as just remarked, subject to no appeal. A set debate on a point of order can only be brought on in one way and under definite conditions. The rules prescribe that due notice of motion must be given that on some future day a vote of censure upon the Speaker will be moved.[2] It need hardly be said that such an event is abnormal and happens but rarely, and that such a motion would only be acceded to by the House if the circumstances fully justified it.[3] To an Englishman it would appear seriously to undermine the exalted position and dignity of the Speaker if, in addition to his application of the rules being open to challenge upon special and important occasions, it was competent for every member to call in question the Speaker's authority whenever he chose, and if

[1] "Interruptions are the commonest things that occur in our debates . . . (they) are the very salt of our debates. . . . It can never be said that interruptions *per se* are disorderly." (From Mr. E. Blake's speech, *Parliamentary Debates* (107), 1041.)

[2] The latest case of the kind was that which was brought up on the 7th of May 1902, upon the motion of Mr. Mooney. Mr. Dillon, one of the Irish Nationalist members, had been censured by the Speaker on the 20th of March 1902, and suspended by reason of an offensive interruption directed against Mr. J. Chamberlain, who was then Colonial Secretary. Mr. Dillon had been previously much excited by a remark of the Minister's. As the Speaker declined to accede to the demand of Mr. Dillon and the other Irish members that he should rule Mr. Chamberlain out of order and demand the withdrawal of his words, a motion was made from the Irish benches for a vote of censure upon the Speaker; it was, of course, defeated by a large majority. (*Parliamentary Debates* (107), 1020–1050.)

[3] See Mr. Balfour's speech (*ibid.*, 1031–1037), in which he showed that no motion for censuring a Speaker had been brought forward for eighty years. An earlier precedent may be found in the year 1777. See *Parliamentary History*, vol. xix., 227 *sqq.*

he was liable at all times to be called upon to defend the correctness of his decisions.[1] It is true that the House is the supreme Court of Appeal, to which the Speaker, like all others, is subordinate, but the authority of the Chair is equally firmly established as against the individual members. Until the judgment of the House is appealed to in the prescribed form the authority of the Speaker must override the doubts of a single member and be final. According to English ways of looking at things the parliamentary umpire would be as much lowered by a dispute with a member about his ruling as a judge would be in a court of law, if, after giving his decision, he allowed himself to be drawn into an argument with the parties whose case he had disposed of, or with the public, about the correctness of his judgment or the grounds upon which it was based. Of course we must never forget what has been emphasised in another connection—that the special conditions found in the House of Commons, the immense power of tradition there, the common interest of all its sections, however divided in party opinion, in maintaining this tradition and the high level of parliamentary life, are indispensable conditions for the working of the whole machinery. Here, again, it is not rules or juristic formulæ, but the psychological factor, historically developed, upon which depends the undisturbed working of so complicated an arrangement as a modern representative constitution.

Besides the general enforcement of the rules of the House, the Speaker's official duty includes, as a specially important department, the assertion of the principles of parliamentary law grouped under the head of *Privilege*, the venerable special rights of the House. He it is who to this day, when a new parliament is opened, claims from the Crown, at the bar of the House of Lords, the confirmation

[1] The debate of the 7th of May 1902 shows how completely these rules have entered into the flesh and blood of the House of Commons; even the Irish leader, Mr. John Redmond, stated the rules clearly and with full approval. (*Parliamentary Debates* (107), 1025.) But he guarded himself by adding, "But such power as that vested in the Chair would be intolerable unless there existed in the House itself the power of reviewing, under proper conditions, those decisions . . . . . If no such power existed . . . then freedom of discussion would be a thing of the past."

of the privileges of the Commons, using the form which has been customary for centuries; and to him the assurance of the Crown is given. So, too, he is at all times the guardian of the inviolability of these rights and privileges against attacks from within the House or without. He is bound without delay and on his own authority to repel any invasion or attempted invasion of the rights of the Commons, and to lay before the House any matter which in his view constitutes a breach of privilege. If, therefore, any such breach of privilege occurs during a sitting in committee, the sitting must at once be broken off and the Speaker must be called in to receive a report of what has taken place. In such a case, again, the Speaker has to exercise the important judicial function of deciding, according to his own views, whether, having regard to all precedents, any breach of privilege has taken place, and whether, therefore, the occasion calls for special action by the House to protect its rights. Here, once more, what has been already said as to the Speaker's interpretation of the rules applies; his judgment, otherwise unfettered, is always based upon an examination, often, no doubt, of an elastic kind, of the precedents laid down in the journals of the House.

We have now reached a point at which we can realise the characteristic feature of the Speaker's office and the modern English conception of parliamentary presidency; we have the clue to a full understanding of the English solution of this constitutional and political problem, namely, the *predominantly judicial character* of the office of the Speaker. The historic development, now long completed, of the complete impartiality of the Speaker has been essential in leading up to this solution, and is at the same time the clearest expression of the search for it. Ever since there has been a House of Commons in the modern sense, there have been judicial features in this organ of the House; but, if we probe to the bottom, the elevation of the judicial function into the distinctive element in the Speaker's office is intimately connected with the development of the system of parliamentary party government. When once the government of England had come to be placed in the hands of an elected majority in a parliament divided into parties, it would have been

intolerable had the president, and with him the rules of procedure, become a constant object of party strife. The conflict of parties in the unreformed House of Commons of the eighteenth century seems, no doubt, only too often a political game played by two different sections of the same governing class, a consequence of the oligarchic character of the parties under the corrupt franchise of the day. However that may be, one thing is certain: the House of Commons has long made it a point of honour, something self understood, that the rules of the game shall be kept by all of the players. Just as the judicial bench in the ordinary courts of law has been excluded from the sphere of influence both of Crown and Parliament, so also the need for raising the Speaker into an impartial and unapproachable protector of the rules of procedure, a real judge in the party war, came to be felt during the same period. The historical account given below will make this abundantly clear.

Moreover, one purely external indication shows that it is not merely a use of analogy to conceive of the Speaker in the modern House of Commons as above all things a judge, nay as the sole judge, of parliamentary law. His decisions are called by a name used for expressions of judicial opinion, "rulings." The modern president of the House of Commons, then, is a judge who has to apply the rules of procedure to the best of his ability and with perfect impartiality, maintaining with a firm yet sensitive hand the proper relations between the two parties to the proceedings before him, the majority and the minority; he must do so by maintaining the rules and the usage of centuries, and by taking care that both majority and minority are unimpeded in their use of the forces and the weapons which the order of business provides for strong and weak. He must further, like a judge, watch to see that the advance of the majority and the resistance of the minority observe the spirit of the rules and the whole spirit of parliamentary life. It is only when the Speaker is looked upon as a judge that we reach a complete understanding of his attitude to the rules on the one hand and to the House on the other. As the law stands above judge and parties, so do settled

tradition and the unwritten standards of parliamentary law stand above the Speaker and the House. To apply this law, to deal with wise discrimination between the House and the individual member and between party and party, to do this according to the rules and in the spirit of parliamentary law is the essential, the crowning task of the Speaker. If we would understand the spirit of parliamentary law we must clearly grasp the principle that its provisions, however various, are all directed to one end, namely that of keeping the activity of Parliament in full swing, and of securing that in any event those affairs of state shall be attended to which could not be dealt with without a regulated course of proceedings in the House of Commons. On the one hand the legislative proposals placed before Parliament by the Government must be promptly despatched; on the other, the minority must, under certain circumstances, be given a chance of postponing the decision of Parliament as to some particular subject, or even, at times, of preventing its ever being reached. These conflicting requirements may both, under different conditions, become necessities of state, to the securing of which the order of business and its treatment by the Speaker must contribute. Protection of a majority against obstruction and protection of a minority against oppression are both alike functions of the Chair. It is hardly too much to say that they exhaust the duties of the high office held by the impartial guardian of parliamentary law, under the ægis of which alone can new legislation be legally brought to completion.

It remains now to cast a glance over the functions of the Speaker which extend beyond the precincts of the House into the world outside. Externally, the Speaker is not only the ceremonial representative of the House, he is its only constitutionally recognised deputy. As the "mouth" of the House he publishes its decisions in the prescribed manner, communicates its thanks, conveys its votes of censure, warnings and solemn declarations, as it has ordered. Through him alone has the House direct communication with the Crown. The Speaker betakes himself in solemn procession to the Sovereign if an address from the House is to be presented, he appears as the head of the Commons before the

bar of the Upper House when the Sovereign comes there in person or by deputy, and he receives all royal messages sent to the House by a member of its body belonging to the Cabinet; alterations by the Lords in bills passed by the House of Commons are sent to him, and he has to consider whether, and if so to what extent, these (or any other proceedings of the Lords) trench upon the privileges of the Commons. The Speaker, too, is the medium of execution for all orders of the House which are directly external in their operation; it is on his authority that summonses are sent to witnesses whom the House may desire to examine, or to private citizens or officials whom it wishes to reprimand: he prepares, in pursuance of the decision of the House, any orders for the arrest of persons who have committed offences against the High Court of Parliament, and he has these orders carried out by the officers who are at his disposal; lastly, he has in his hands the machinery for keeping the numbers of the House to their full strength. Except in the case of a general election he sends out the formal warrants authorising the issue of writs of election, even when the vacancies to be filled up arise during a prorogation. He is, of course, the chief under whom the secretarial and recording work of the House is carried on: all documents and papers which concern the House as a whole are delivered to him; and he communicates them to the House, unless in his discretion he declines to do so, a course which under certain circumstances he is entitled to adopt. The general rule is that every written document read out by the Speaker is at once laid upon the table of the House, and then entered *verbatim* in the minutes and journal of the House. The staff of the department of the Speaker are under his direct control, and the staffs of the departments of the Clerk of the House and the Serjeant-at-arms are under his general control.

The whole elaborate duty of driving the parliamentary machine is thus placed in the Speaker's hand. The greatness of the honour which the office confers upon its bearer in the nation's eyes, is matched by a corresponding responsibility, and by the importance of the claims made on his capacity and character. There can be no better testimony to the incomparable moral and spiritual health and stability

which for centuries have marked the ruling classes in England than the series of strong and capable men who have succeeded one another in the Speaker's chair since the commencement of parliamentary government. They have not excelled in what would be called greatness or heroism ; such qualities, it may readily be conceded, would find no place in the historically settled character of the office ; what has distinguished them has been their display of excellences of character and spirit within the reach of all mankind. We must search in the ranks of the Speakers not for leaders of the nation's policy, but for specimens of the capable average man of the ruling class. We can, in all seriousness, feel little doubt of the political and moral capacity of the nation itself when the average is so high and continues always at an even level ; when time after time simple members of the House, often before their appointment known but to a narrow circle, have been found able to maintain—during the last two hundred years without exception—the elevation of the office ; when, finally, each Speaker seems to gain moral and spiritual strength from the fulfilment of his duties. Ceaseless diligence and love of order in the management of parliamentary business, a lofty conception of the Speaker's task, the passing on from generation to generation of a tradition of unapproachable personal integrity and political impartiality, have come to be associated with the very idea of the Speakership ; these qualities, united to clear grasp of the methods of conducting business, and at times to an amazing sagacity in handling men, are the great characteristic traits of the Speakers as they pass in long sequence before the view of the historian of Parliament.

This seems an appropriate place at which to take a short glance at the extent and essential features of *Privilege*, of which the Speaker is the supreme guardian. As has been already stated in the Introduction, it is no part of the plan here adopted to discuss the law of privilege on its own account. This section of English parliamentary law deals with an independent problem of the highest importance in politics and history, and for exhaustive treatment it should be specially

dealt with. We must here be content with the indications which follow, and confine ourselves to such points as are necessary for understanding procedure.

We may, following Sir W. Anson's excellent treatment of the subject, divide the aggregate of parliamentary privileges into two groups, one consisting of those which are asserted by the Speaker when he presents himself to have his election confirmed, and the other of those rights which do not receive this solemn formulation. The first group comprises the privilege of freedom of person, the privilege of free speech and certain technical privileges, viz., the privilege of collective access to the Crown, and of having the most favourable construction put upon the proceedings of the Commons. There is not in these days much to be said of the two last-mentioned. The right of free speech will be dealt with in the section upon the debates of the House ; so far as it affects the publication of debates and parliamentary papers, it has already been sufficiently considered.

The privilege of freedom of person protects members during the session, and for forty days after prorogation or dissolution ; the protection is a survival from the ancient Teutonic idea of judicial safe conduct ; during the currency of the period members are safe from arrest, have immunity against the authority of the state. But there is an important qualification—parliamentary immunity is excluded not only in cases of treason and felony, which have been exceptions from the earliest days, but in every case of arrest for an indictable offence, *i.e.*, practically in all criminal matters.

The second of Sir W. Anson's groups comprises, in the first place, the right of the House to supervise the due constitution of its own body, both by attending to the filling up of vacancies and by seeing that its members are legally entitled to their seats. With this object the House, and the House alone, during its sittings, gives the necessary orders for the holding of elections to vacant seats. Under the same head falls the historic right of the House to determine disputed elections, a right, however, which since 1868 has in practice been transferred to the regular judges, being now exercised by the King's Bench Division of the High Court. And, finally, the House of Commons has the exclusive

power of adjudicating upon legal disqualifications alleged to exist in any person returned, and even of expelling from the House by its order persons whom it deems unfit for membership.

In the second place there is the right, inherent in each House, to exclusive cognizance of matters arising within it. This is the basis of the complete autonomy of each House in respect to its procedure.[1] And hence are derived the special rights of the House which may be called the clasps which bind together the whole subject matter of privilege, namely, its right in any particular case to be the sole and authoritative judge as to the existence and extent of a privilege and as to whether it has been infringed, and its further right to use its inherent power to punish, by way of sanction to the judgment at which it arrives. Privilege, however, as both Anson and May aptly observe, is law, and must rest upon a legal basis: it follows that the courts of law must, on principle, be competent to discuss the question where the boundary line is to be drawn between the jurisdiction of the ordinary courts and the extraordinary jurisdiction which the Houses of Parliament are entitled to exercise for their own protection. A number of celebrated conflicts have arisen from this source in which the courts of common law and Parliament, especially the House of Commons, have come into opposition; we cannot here go fully into the subject, which has, moreover, been alluded to in earlier chapters.[2] The leading cases, such as *Burdett* v. *Abbot* (14 East, 1), *Howard* v. *Gosset* (10 Q.B., 359), *Bradlaugh* v. *Gosset* (L.R., 12 Q.B.D., 271), have not produced any intelligible or exact delimitation of the boundary between the ordinary law and the privileges of Parliament. We may state generally that privilege, like the rest of parliamentary law, is the product of a historical development, and that the legal notions which receive their expression in the claim of privilege have acquired a new significance with the political supremacy of the House of Commons as established by the system of parliamentary government. It must also not be overlooked

[1] See remarks *supra*, pp. 7, 81.

[2] See *Anson*, vol. i., pp. 175–184; also *infra*, Part ix.

that parliamentary privilege, as opposed to the ordinary law, has always been, and still is, based on the assumption of a special jurisdiction over the members of the House themselves. This important point will have to be discussed when we come to the explanation of the notion of parliamentary freedom of speech.

CHAPTER III

The History of the Office of the Speaker[1]

THE first Speaker (*Prolocutor*) of the House of Commons whose name appears in the records was Sir Thomas Hungerford, of whom the Rolls of Parliament (vol. ii., p. 374), under date 1377, report that he "avoit les paroles pur les communes." It is, however, not until the parliaments of Queen Elizabeth's day that the office stands out with any distinctness either in the journals of the House or in contemporary reports. The legal authorities vested in the Speaker in the year 1600 were not materially different from those which we find two hundred years later. But in some definite and important aspects of the Speaker's office a process of change began about that time which was not finally completed till the beginning of the nineteenth century. The result of the process is the modern, non-partisan Speaker portrayed in the foregoing chapters. From the time of the Reform Bill there has been no essential change in the nature of the Speakership. The Victorian age has, no doubt, introduced many innovations among the Speaker's functions, but it has had no influence upon the character of his office.

We have then, substantially, three types of Speaker: first, the Speaker of the mediæval Parliament, secondly, the Speaker of Tudor and Stuart days, and, thirdly, the Speaker of the period from the beginnings of parliamentary party government.

So far as the first stage is concerned we may say in a few words all that needs to be mentioned. We are no doubt justified in assuming that even before 1377 the Commons had some officer to preside over their deliberations and to interpret their wishes to the Crown.[2] From the last-named year the *Prolocutor* of the Commons is usually named in the Rolls of Parliament; but there are many gaps in the list of Speakers for the fourteenth and fifteenth centuries.[3] This, in itself, is a proof that the office had not yet become too independent. From the first, as remarked before, the records show that the Speaker was elected by the Commons and then confirmed in office by the Crown. There never was a period in the history of the English Parliament when a president of the popular assembly was assigned by the Crown as a matter of right, though, doubtless, in the mediæval parliaments the choice of a Speaker was decidedly

[1] See especially the seventh chapter in *Henry Elsynge's* "The Manner of Holding Parliaments," which goes into great detail as to the office of the *Prolocutor Domus Communis.*

[2] In Edward III's time (1343) we find "Les chivalers des counteez et les communes responderent par Monsieur William Trussel" (*Rot. Parl.*, vol. ii., p. 136; *Elsynge*, p. 156).

[3] *Hakewel*, in a supplement to his book ("The Manner how Statutes are Enacted in Parliament by Passing of Bills"), p. 199, gives a catalogue of all the Speakers down to 1670. It appears from this that most of the Speakers were lawyers—gentlemen of the long robe.

influenced by the Crown.[1] For instance, as Gairdner, the historian of Richard III, points out with reference to the election of Speaker in 1484, the appointment of Catesby "had in all probability been suggested by the King himself; for Catesby was one of Richard's principal councillors."[2] Moreover, in the conduct of his office, the "Parlour et Procurateur" of the Commons during the first centuries of parliamentary history appears mainly as the link connecting Crown and Commons. The few available sources of information respecting the inner life of the House of Commons in the fourteenth and fifteenth centuries enable us to see the frankly political character of the office. If Parliament had to deal with a strong King the Speaker often seemed rather an advocate of Crown interests in the House of Commons than the free chief of the latter. In consequence, under Henry IV we already find a Speaker who received large material proofs of royal favour, estates and official appointments. On the other hand, when the King had need of the Commons, there were not wanting, even in those days, self-reliant Speakers who could make long speeches to the King interlarded with plenty of good advice. Some cases are reported in which a Speaker had to resign his post on political grounds, either because he did not please the King or because the Commons were dissatisfied with the manner in which he acted as their representative towards the Crown. It is remarkable that in the whole period there is only one case reported in which there was any direct infringement, by the authority of the Government, of the legal privileges of the House personified in the Speaker, and that one case occurred in a time of great political ferment.[3]

The authorities for the second period also show clearly the complete dependence of the Speakership upon the Crown and the acknowledged political character of the office. The great power of the Tudor monarchs was reflected in the subservient demeanour of the Speaker towards Crown and Government. It became a custom for him to make repeated excuses and to declare himself unworthy of election; he would begin in the House of Commons by making a show of physical resistance against being led to the Chair, and would reiterate his declarations of reluctance to the Crown; this custom, which had long degenerated into a farce,[4] was first abandoned by Arthur Onslow (1727–8 to 1761). The Speakers, too, when submitting themselves for approval, began to hold forth in long and solemn speeches, the contents of which were of their own devising, whereas, in earlier days, as D'Ewes truly observes, Speakers had been wont

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[1] The request of the Crown to the Commons that they will choose a Speaker appears for the first time 2 Henry IV, after which it occurs regularly. By the time of Queen Elizabeth this formal proceeding by the Crown appears to be regarded as indispensable. (*Elsynge*, pp. 162 *sqq.*)

[2] *Gairdner*, "History of Richard III," pp. 199, 200.

[3] This was the case of the imprisonment of Speaker Thorpe, during an adjournment of Parliament in 1452, on the demand of the Duke of York (see *Townsend*, "History of the House of Commons," vol. i., pp. 3, 4). In the early years of Henry V's reign a resignation of office was forced upon Speaker Stourton by the Commons, who were offended by his subservience to the Crown (see *Hakewel*, p. 205).

[4] *D'Ewes* (p. 42) describes the practice as "meerly formal and out of modesty."

to say only what the Commons had authorised. In the times of Henry VIII and Elizabeth, when Parliament bent without resistance to the power and will of the Crown, even at times to the point of prostration, the Speakers of the House, too, acted as if they were competing for a prize in humility of attitude and Oriental submissiveness of speech. In the same period it became a regular practice for the Speaker to receive from the Crown an annual payment of £100.[1] In addition, he often held a Crown appointment. Sir Richard Bell, the Speaker in Queen Elizabeth's fourth parliament, was made Chief Baron of the Exchequer, which office he held along with his Speakership. Sir Edward Coke was both Solicitor-General and Speaker in 1593, and Sir Edward Phelips, who was Speaker from 1604 to 1611, was King's Serjeant. The Speaker was regularly a paid servant of the Crown. One of the contemporary reporters gives naïve expression to the fact of the Speaker's dependence on the Crown, writing, "The Commons choose their Speaker, who (though nominated by the King's Majesty) is to be a member of that House."[2] And in 1625 Sir John Eliot, the first of the champions of the House of Commons against Charles I, refers slightingly to the Speaker's office, remarking that it had been "too frequently filled by *nullities*, men selected for mere Court convenience." The true state of affairs is betrayed by the fact that the nomination of the Speaker was always undertaken by some member of the House who was in the service of the Crown.

No doubt there was even then a higher ideal of the Speakership in some minds, as the report of so well-informed a contemporary as Hooker informs us: "During the time of the Parliament he ought to sequester himself from dealing or intermeddling in any public or private affairs and dedicate and bend himself wholly to serve his office and function. Also he ought not to resort to any nobleman, counsellor, or other person, to deal in any of the parliament matters, but must and ought to have with him a competent number of some of that House, who may be witnesses of his doings" (pp. 120–121). The practice was very different from Hooker's theory: "In the Lower House the Speaker of the Tudor reigns is in very much the same position as the Chancellor in the Upper House; he is the manager of business on the part of the Crown, and probably the nominee either of the King himself or of the Chancellor. . . . The result was that the Speaker, instead of being the defender of the liberties of the House, had often to reduce it to an order that meant

[1] "He hath allowance for his diet one hundred pounds of the King for every sessions of Parliament. Also he hath for every private bill passed both Houses and enacted, five pounds." (*Mountmorres*, vol. i., p. 121.)

[2] Tract in *Harleian Miscellany*, vol. i., p. 246. Another tract says drily as to the choice of the Speaker: "One of His Majesty's Council doth use to propound that it is His Majesty's pleasure that they shall freely choose a Speaker for them; and yet commendeth, in his opinion, some person by name" (*ibid.*, vol. v., p. 259). On the other hand, the description of the Speaker's office by Hooker shows strong marks of idealising: "Also the King ought not to make any choice or cause any choice to be made of any . . . Speaker of the Common House, . . . but they must be elected and chosen by the laws, orders and customs of the realm as they were wont and ought to be, and the King's good advice yet not to be contemned" (*Mountmorres*, vol. i., p. 133).

obsequious reticence or sullen submission." Thus does the great constitutional historian, Stubbs, characterise the Speakers of the sixteenth century.[1] The duty placed upon the Speaker of interpreting the will of the Commons to the Crown in itself gave him ample scope for serving the Government. In addition, the Speaker undoubtedly had a right, at that time, upon the introduction of a bill into the House, to explain by a speech the probable effect, in his opinion, of such an enactment; he had also a dominant influence upon the programme of the day's business, as he could fix what bills were to come up for discussion and what votes were to be taken. Lastly, he had the power of declaring bills to be out of order or of withholding them from the House as being infringements of the royal prerogative, even at times as being contrary to express royal commands. We may see how freely the sixteenth century Speakers disposed of the records of the House by referring to the instructive order of the 17th of May 1604, on which date it was solemnly entered upon the journal as an order of the House that in future the Speaker was not to send a bill to the King or any other person before the House was made acquainted with it.[2] The incident proves how strongly the Speaker of the day felt it his duty to keep the King and Government well informed of all that was passing in the House of Commons. Another instructive incident occurred in the parliament of 1607: the Speaker said with regard to the treatment of a certain petition that the King had taken notice of it and he therefore pressed the House not to have it read. About this time the Commons began to guard itself against such invasions of the privileges of Parliament. Similar occurrences in the parliaments of 1641 and 1642 and in Charles II's time led to the establishment of a principle which has never since been disputed, namely, that it is a breach of privilege for the Crown to take notice of any matter which is depending in either House.[3]

The authorities give copious and eloquent information as to the bearing of the Speaker and his manner of interposing for the management of the House of Commons. On the 28th of February 1592–3 the Speaker reported that he had been sent for to Court, where the Queen had personally commanded him what he was to communicate to the House. He was warned on his allegiance to allow no bills to be read which concerned "matters of state or reformation in causes ecclesiastical."[4] During the sitting of the 23rd of November 1601, Mr. Secretary Cecil said, "And you, Mr. Speaker, should perform the charge Her Majesty gave unto you in the beginning of this parliament, not to receive bills of this nature."[5]

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[1] *Stubbs*, "Seventeen Lectures on the Study of Mediæval and Modern History," 1900, pp. 311, 312.

[2] *Parry*, p. 246. In the Commons it is moved, touching a bill against "A. B.," which the King had sent for and retained, "That it might not be drawn into precedent for any Speaker being trusted by the House, to deny to read a bill which he receiveth, to withdraw it out of the House, to inform the King or any other, before the House be made acquainted with it." (*House of Commons Journals*, vol. i., p. 212.)

[3] Exceptions occur when the personal interests of the Crown are affected by a bill or a motion in the House. See *supra*, Part iv., chapter ii.

[4] *D'Ewes*, pp. 478, 479.

[5] *D'Ewes*, p. 649.

The most instructive passage in any of the authorities is the speech of Wentworth, an active opponent of the Government, in the parliament of 1587, a speech which afterwards drew down upon him a long imprisonment. He delivered to the Speaker, in writing, a long string of questions which he begged might be read carefully, and then answered. The questions were: "Whether this Council be not a place for any member of the same here assembled, freely and without controllment of any person or danger of laws, by bill or speech to utter any of the griefs of this Commonwealth . . ? Whether there be any Council which can make, add to, or diminish from the laws of the realm, but only this Council of Parliament? Whether it be not against the orders of this Council to make any secret or matter of weight, which is here in hand, known to the Prince or any other, concerning the high service of God, Prince, or State, without the consent of the House? Whether the Speaker or any other may interrupt any member of this Council in his speech used in this House, tending to any of the forenamed high services? Whether the Speaker may rise when he will, any matter being propounded, without consent of the House, or not? Whether the Speaker may over-rule the House in any matter or cause there in question; or whether he is to be ruled or over-ruled in any matter or not . . . .?"[1] Such complaints clearly show the position of the Speaker in Parliament at the time they were made.[2] We shall have to point out in another connection the effect of this situation on the development of the order of business on one critical point.[3] There can be no little doubt that the absolutist domination over Parliament by Henry VIII and his successors found its main support in the subservience of the Speaker and his advocacy of the interests of the Crown.[4]

The first struggles of the self-reliant Parliament under the supremacy of the Puritans soon made it clear that the Speaker's old attitude was no longer tenable. Nothing shows this better than the record of the memorable sitting of the 2nd of March 1629, the closing scene of parlia-

[1] *Parry*, pp. 228, 229.

[2] It cannot be said that Crown and Government ever left Parliament in doubt as to their views. In the Lord Chancellor's speech of the 23rd of February 1593, the answer to the request for confirmation of the privileges of the House is very explicit. "Priviledge of speech is granted, but you must know what priviledge you have, not to speak every one what he listeth, or what cometh in his brain to utter that; but your priviledge is I or No. Wherefore, Mr. Speaker, Her Majesties pleasure is, that if you perceive any idle heads which will not stick to hazard their own estates, which will meddle with reforming the Church and transforming the Commonwealth, and do exhibite any bills to such purpose, that you receive them not, until they be viewed and considered by those, who it is fitter should consider of such things, and can better judge of them." (*D'Ewes*, p. 460.)

[3] See *infra*, pp. 207 *sqq.*

[4] See the lively description of the Parliament of 1523 and the characteristic manner in which the all-powerful Cardinal Wolsey bent the Commons to his will through the Speaker, Sir Thomas More, in *Stubbs*, "Seventeen Lectures," p. 314. Nevertheless the House offered a stubborn resistance to the demands of the Crown for money and only granted part of the taxes that were asked for.

mentary life before the eleven years of Charles I's absolute government. The King had decided to dissolve the House, whose resistance to the Crown was growing continually plainer, and to prevent any business being transacted before the end of the session had directed Speaker Finch to deliver to the House a command to adjourn. The Commons, under Sir John Eliot's leadership, were firmly resolved on resisting this unconstitutional proceeding, and to prove that the House was entitled, until the session was brought to an end, to continue or adjourn its sittings at its own pleasure. They declined to comply with the King's command until they had made a protest against his unconstitutional policy. When, therefore, the Speaker wished to leave the chair, he was kept there, at first by physical force and then by threats, and the House continued to sit. The Speaker refused, however, to allow Eliot's proposed resolutions to be read by the Clerk or to put them to the vote. In plaintive tones he called out, "What would any of you do if you were in my place? Let not my desire to serve you faithfully be my ruin." He protested that he must obey the King's commands; in reply he was told that it was his duty to obey the commands of the House, on pain of being summoned to the bar. The Speaker could see no way out of his dilemma. "I am not less the King's servant," he said, "for being yours. I will not say I will not put the reading of the paper to the question, but I must say I dare not."[1] So great was the Speaker's terror of his royal master! There can be no doubt that, however much Finch's personal weakness may have contributed to this scene, his conception of his own office was but too closely in accordance with that which had long been accepted as correct at the court of Charles and in the Government circles of the day. So long as the House of Commons was in unison with the Crown, as in Elizabeth's time, there was no harm in the Speaker's regarding himself as the Crown's obedient servant; but the great constitutional struggle between King and Parliament, which had become inevitable from the time of the accession of James I, was bound to bring about a change in the relation between Crown and Speaker corresponding with the profound change in Parliament. Finch's tenure of office was the lowest point in the line of the historical development of the office. It is true that the Speakers of Charles's two later Parliaments of 1640 and 1641 were actually selected by the Crown; but the Speaker in the Long Parliament, Lenthall, was the first, after a long interval, to maintain a firm attitude and a high conception of his office, as especially shown by his conduct upon the day (4th January 1641–2), when Charles, defying all law and tradition, broke into the House with his bodyguard to arrest in person five leaders of the Opposition. When the King put the question to the Speaker whether the members whom he sought, and who had made their escape, were present, Lenthall fell on one knee and answered, "Sire, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here, and I humbly beg your Majesty's pardon, that I cannot give any other answer than this, to what your Majesty is pleased to demand of me."[2]

[1] *Parry*, p. 331; *Rushworth*, vol. i., pp. 660–670; *Gardiner*, "History of England," vol. vii., p. 68.

[2] *Gardiner*, "History of England," vol. x., pp. 138–142. "Lenthall was," says *Gardiner* ("History of England," vol. ix., p. 220), "better fitted

This same Lenthall was also made Speaker of the House of Commons called together by Cromwell in 1654. The Lord Protector on this occasion, as on many others, took to himself royal privileges, inasmuch as he reserved the right of nomination. In the Restoration period the Speakers shared in no small degree in the Byzantinism of the time; an excellent illustration of their attitude towards the Crown may be found in the speech of Sir Edward Turner at the close of the session of 1665, which is, at the same time, a good specimen of the style of state orations of the day, turgid and full of quotations.[1] The crisis in the history of the office began under the next Government. Sir Edward Seymour had been Speaker in the parliament which was dissolved in January 1678–9, and after the general election he was again presented to the King for approval. But the confirmation of his election was now refused. To the amazement of the Commons, the Lord Chancellor explained that "the approbation which is given by His Majesty to the choice of a Speaker would not be thought such a favour as it is, and ought to be received, if His Majesty were not at liberty to deny as well as to grant it." The Commons were desired to make another choice. At the sitting of the House which followed, one of the members

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for the post than Charles could have imagined. He was surpassed by some in the House in knowledge of parliamentary precedent, but he was the first to realise the position of a Speaker in times of political controversy. He would not, like Finch, in 1629, place himself at the service of the Crown. Neither would he, like Glanville, in the Short Parliament, take an active part in opposition to the Crown. He was content to moderate and control, and to suggest the means of reconciling differences, without attempting to influence the House in its decision." Hatsell quotes a different characterisation of Lenthall; the writer to whom he refers attributes the maintenance of order in the Long Parliament chiefly to the Clerk Elsynge, and calls Lenthall "obnoxious, timorous and interested," alleging that he was often confused in collecting the sense of the House and drawing the debates into a fair question (*Hatsell*, vol. ii., 3rd edn., p. 245, n.; 4th edn., p. 260, n.). Townsend also ("History of the House of Commons," vol. i., p. 22) pronounces a very unfavourable verdict upon Speaker Lenthall, and gives examples of his lack of political character. The following entries in the journal (*House of Commons Journals*, vol. ii., p. 515) show the Commons to have been ready to reward Lenthall's behaviour at the critical moment, and that he was prepared to take advantage of his opportunities: Petition of William Lenthall, Speaker, concerning the great decay in his body and estate occasioned by his continual employment here: order for payment of £6,000 as a voluntary and free gift: *ibid.*, pp. 522, 523, Speaker Lenthall thanks the House for their great respect in voting him the sum of money.

[1] *Parliamentary History*, vol. iv., 329 *sqq.* There is also an interesting debate in the House of Commons at the beginning of the session of 1673: objection was raised to the new Speaker, Sir Edward Seymour, from several quarters on the ground that he was a privy councillor, that no instance of such an appointment since the Reformation could be found, and that it endangered liberty of speech; the proposed vote of censure only obtained the support of a minority. (*Parliamentary History*, vol. iv., 589 *sqq.*)

who had the King's confidence nominated Sir Thomas Meres as a candidate favoured by the Crown. These two steps by the King roused great resentment and firm resistance among the Commons. In the long and vehement debate which ensued, the confirmation of the Speaker's election was characterised as a courtesy right, the exercise of which had long been a mere form, and, by way of protest, the House adjourned. At the same time a deputation was sent to the King with an address, in which it was maintained that the free choice of a Speaker was an ancient right of the House. The King stood firm; so also did the Commons, who sent another deputation and a second protest; the only result was that Parliament was prorogued. The new session which opened after a few days interval found both sides willing to compromise. Both of the candidates previously nominated were withdrawn; William Gregory was elected Speaker and accepted "without hesitation." The Commons had not gained a complete victory, but since that time, neither Charles II nor any other King has ventured to give the House of Commons express commands as to the election of a Speaker.[1]

The elections in Charles II's two last parliaments were, as a matter of fact, quite free; but Court influence lasted for some time longer and survived the Revolution. It was, indeed, possible in 1689 for a venal politician, such as Sir John Trevor, to hold the position of Speaker, and, while in office, to attempt to win over the Tories to the side of William III by corrupt means.[2] Even in the parliament of 1721–1727 Walpole asserted that the way to the Speaker's Chair lay through the gate of St. James's Palace. But as early as the election of Trevor's successor in 1695 the attempt of a Court official to get a special candidate of the King's appointed, was defeated, and the right of the House to free choice asserted. The Speaker who was then elected was irreproachably independent. His appointment may be regarded as the opening of the third period, during which the present conception and position of the office of the Speaker was, in the course of about a hundred years, to come to full development.

The legal basis for the free choice of a Speaker had by this time been firmly laid. It is true that Crown influence was actually exercised on several subsequent occasions, especially under George III, whose attempts to restore the supremacy of the Crown by corrupting Parliament were successful for a time, and extended to this branch of the House's activity. But all his endeavours were unable to hinder the growth of the new tradition and character which the Speakership was assuming. The chief share in the process must be ascribed to Speaker Arthur Onslow, who for

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[1] See *Parliamentary History*, vol. iv., 1092–1112. The King's technical right to refuse to confirm the election of a Speaker has never been abandoned, and is, in theory, still subsisting. It is instructive to find that the whole episode of Seymour's election and refusal is omitted from the journal of the House—obviously in the hope of preventing its being used as a precedent.

[2] Trevor, who was proved in open debate in the House of Commons to have accepted a bribe, is the only Speaker whom the House has declared to have forfeited his membership and expelled (1694–5). See *Townsend*, "History of the House of Commons," vol. i., pp. 59–62; *Parliamentary History*, vol. v., 906–908.

thirty-three years, from 1727–8 to 1761, occupied his high office without a break, and formed a stable and durable tradition. Until his time Speakers had been accustomed, though with diminishing frequency, to address the House, by leave, while it was engaged in debate; moreover, re-election not being a recognised rule, the Speakers of former days had upon a dissolution re-entered the party lists and fought for their return. And it was still looked upon as proper that the Speakership should be coupled with a Crown appointment.[1] In all these points Arthur Onslow raised the conception of the Speaker's office to a new and higher level. He looked upon himself in the first place as the president of the House in the modern sense, as one who must not be in any degree a partisan of the Government and their party, but must give equal rights to all members of the House. He resigned the office of Treasurer of the Navy, which he held, and contented himself for years with the income arising out of the fees on private bills. He was a strict upholder of the rules; his manner of discharging the duties of his station and the influence exerted by him on the development of the order of business have already been described in another connection.[2] After his time a strong reaction in the conduct of the office set in. The confused party conflicts during the first half of the reign of George III and their damaging influence on Parliament were not without effect on the Speakership; but on the whole the tradition which had once been established continued.[3] An act of glaring partisanship by Onslow's successor led to open rebukes in the House from members of all parties, and he had to make his apologies. Speaker Norton, too (1770–1780), repeatedly showed his party leanings by speeches in committee; he was an avowed opponent of the King, and on one occasion, in 1777, when presenting a money bill which placed a considerable sum at the disposal of King George for his household, he went so far as to say that the grant made was "great beyond example," and that the House hoped "that what they had granted liberally would be applied

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[1] Such was the custom for centuries: Sir Edward Coke was Solicitor-General, Sir Edward Seymour Treasurer of the Navy, Harley, in Queen Anne's time, was Secretary of State, and Spencer Compton Paymaster-General. As early as the end of the seventeenth century public opinion had pronounced strongly against such pluralism, as we may learn from a pamphlet published in 1698 entitled: "Considerations upon the choice of a Speaker of the House of Commons in the approaching session." (*Parliamentary History*, vol. v., Appendix xiv.)

[2] *Supra*, vol. i., p. 55.

[3] The description of the nature of the office of Speaker given in the course of the debate of 1780 upon the election to the post is instructive: "To be capable of filling the Chair with dignity, the person proposed must understand the constitution of the state, be well acquainted with the law of the land, and, above all, be perfectly master of the law of Parliament. He must have a zealous attachment to the rights and privileges of the Commons of England, and a sufficient degree of ability and integrity to support, maintain and defend them; he must be diligent without being precipitate, and firm and decisive without being rash, and that which was a Speaker's most important duty was his conducting himself with the strictest impartiality on every occasion." (*Parliamentary History*, vol. xxi., 793.)

wisely."[1] The rejoinder of George III to this fatherly admonition was the exertion of direct pressure upon the Government party to prevent Norton's re-election in 1780; in his place a member belonging to the Court party, Wolfran Cornwall, was chosen.[2] Under him and his successor considerable deviations from the Onslow tradition took place, in so far as both Speakers repeatedly showed themselves open partisans. Addington, whose general conduct of business is described as impartial, allowed his sentiments as a Tory and an adherent of Pitt to prevent his declaring breaches of the rules which Pitt committed in the House to be out of order. During the whole tenure of his post Addington was in direct communication with George III, and he was transferred straight from the Chair of the House to the office of Prime Minister (1801). On no subsequent occasion has a Speaker exchanged his position for a leading place in politics, and even at the time it was looked upon in many quarters as irregular.[3] When Addington, after holding the premiership for three years, once more made way for Pitt and returned to the House as an ordinary member, he felt that the general sense of his fellow members was opposed to an ex-Speaker taking such a position, and himself begged for and obtained his transfer to the House of Lords, with the title of Lord Sidmouth. At the opening of the nineteenth century, then, the Speaker still was an active member of the House, and belonged to a definite party; such an attitude was not yet felt to be incompatible with his office. Perhaps the best proof of this is the behaviour of Addington's successor, Speaker Abbot (1802–1817); he repeatedly took an active part in the discussions in committee, and on the most important question of domestic policy then before the country, Catholic emancipation, showed himself a fanatical partisan, using the opportunity afforded to him, when delivering a money bill at the bar of the House of Lords, to make a political speech in opposition to the Catholic claims. This,

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[1] *Parliamentary History*, vol. xix., 213.

[2] The election of Cornwall was the occasion of a sharp party contest. Sir Fletcher Norton during his tenure of office had repeatedly shown his leanings towards the Opposition; the majority under Lord North determined to place a trustworthy party man in the Chair. The want of deference towards the King which Sir Fletcher Norton had shown was made a chief reason for the attitude taken towards him. The debate gave plenty of opportunity for expressing the differences of view which existed. It was maintained in forcible terms that the Speaker ought to be a member for a real constituency—not a placeman—that he should hold no Crown appointment (*Parliamentary History*, vol. xxi., 793 *sqq.*). Both objections applied to Cornwall. It is remarkable that the ex-Speaker and candidate of the minority took part in the debate in person and indignantly protested against the reason given by the Government for passing him over, namely that his health was unsatisfactory. In the end Cornwall was elected by 203 votes to 134. A few days later, however, the House passed a vote of thanks to Sir Fletcher Norton for his self-sacrificing work as Speaker.

[3] See *Porritt*, vol. i., p. 461. At the beginning of the eighteenth century, Harley, while occupying the Speaker's Chair, became Secretary of State and leader of the Tory party; in 1710 he became Prime Minister. See *Roscoe*, "Robert Harley, Earl of Oxford" (1902), pp. 28–46.

it is true, led to the proposal of a vote of censure in the House of Commons: Abbot defended his conduct and relied upon precedents, showing the action of sixteenth century Speakers. The debate, in which nearly all the prominent members of the House took part (22nd of April 1814), showed a practically unanimous disapproval of Abbot's conduct. Though the motion was rejected by the majority, for tactical reasons, both the debate in the House and the general current of public opinion proved that the independence of the Chair from all political parties had at last come to be regarded as an indispensable postulate of parliamentary life.[1] Manners Sutton, Abbot's successor (1817–1835) regarded himself still as a Tory when not actually officiating, and continued to share in the counsels of his party; but this cost him his re-election in 1835 in spite of his perfectly blameless conduct within the House.

The next Speaker but one after Manners Sutton, Shaw Lefevre, finished in the nineteenth century what Onslow had begun in the eighteenth. He is, to the present day, looked upon as the model for the conduct of the Speakership, and it is to him that must be ascribed the completion and permanent settlement of the doctrine of the Speaker's absolute impartiality. He re-established the discipline of the House of Commons, which had become somewhat lax during the struggles of the first years of the century, and laid down the principle that the Speaker should refrain, without exception, from all participation in politics, not only in the House, but outside as well. It followed that the practice, which Manners Sutton was the last to adopt, of joining in committee debates was thenceforward recognised as unfitting. From the middle of the nineteenth century, then, the Speaker has been independent of party as well as independent of the Crown, and has had to regulate his whole action and conduct in accordance with this principle.

So much for the external history of the Speakership, which will have amply shown how slowly and with what difficulty the great political principle of the Speaker's complete political impartiality, has fought its way to full and undisputed recognition, though it now governs the entire function of the Chair in the House of Commons, in its practical application. The earliest conception of the office of the Speaker was that of a link between Crown and Commons; when he ceased to occupy this position there was still a danger that the high judicial post, which is entrusted to the president of the House of Commons, might, under the influence of the growth and final mastery of the principle of party government, be turned into a political organ of the majority. It must be set down to the keen political sense of the English nation that this danger was soon recognised and warded off by the formation of a

[1] Plunkett, one of the leading Irish members, said: "I am free to say that the speech . . . . was one of the most formidable attacks on the constitution of Parliament that has occurred since the Revolution." And Tierney, the Whig leader, declared: "When a bill was passed, it spoke for itself. But if this discretion was to be considered as vested in the Speaker of adverting to the proceedings of the House, the Speaker of the House of Commons must be a party man. There would be an end to everything like a Speaker for a length of years, by whose experience in the manner of conducting the business of the House they could derive advice and instruction." (*Hansard* (27), 503, 517.)

strong tradition, which may now be looked upon as a firm protection against the reappearance of any such tendency in the future. As the emancipation of the Speakership from the Crown finds expression in the right of free election, so does the escape of the Speaker from party ties find expression in his *renunciation of his rights as a member*. It was at a comparatively early date that it became a recognised principle that the Speaker was not entitled to speak in the House upon bills and motions which came before it, and that, except in the case of equality, he was not to give a vote. The first important teacher of constitutional law in England, Sir Thomas Smith, wrote: "The Speaker hath no voice in the House, nor they will not suffer him to speak in any bill to move or dissuade it. But when any bill is read the Speaker's office is, as briefly and as plainly as he may, to declare the effect thereof to the House." This principle was laid down in emphatic terms during the last parliament of Queen Elizabeth (1601).[1] And an order of the 27th of April 1604 directed: "That if any doubt arise upon a bill, the Speaker is to explain but not to sway the House with argument or dispute."[2] The idea was then current that the Speaker was not by speech or vote to interfere in the House on behalf of any party, but it was far from being accepted that in order to keep the Speaker from partisanship it was necessary that he should discard all active membership. He was at liberty to speak in committee whenever he thought fit. Hatsell, who describes the practice of the second half of the eighteenth century, says distinctly: "The Speaker is not obliged to be at committees of the whole House; when he is at a committee he is considered as a private member, and has a voice accordingly."[3] As a matter of fact, till the time of parliamentary reform, the Speakers of the eighteenth and the first few years of the nineteenth century did take part in committee, though no doubt rarely and only upon important occasions. The practice of the years since the Reform Bill has not only prevented the Speaker from exercising this form of activity, but has ended in treating all party action by him as inadmissible, and has so worked out the modern type. It has corrected the only serious fault of the English system of parliamentary presidency judged by Bentham's statement of the rational principles applicable to such an office. The whole discussion can find no better epilogue than the following sentences in which, with deep

[1] On the occasion of a division upon a certain ecclesiastical question the votes were, ayes 105, noes 106, the Speaker not having voted. The defeated party complained that one of their supporters had been pulled back by the sleeve, and further called upon the Speaker to give his vote. One member contended "When Her Majesty had given us leave to choose our Speaker, she gave us leave to choose one out of our own number, and not a stranger . . . . therefore he hath a voice." It was answered by Sir Walter Raleigh, and confirmed by the Speaker, "That he was foreclosed of his voice by taking that place . . . and that he was to be indifferent for both parties." Mr. Secretary Cecil supported this view, saying in characteristic words, "The Speaker hath no voice; and, though I am sorry to say it, yet I must needs confess lost it is, and farewel it." (*D'Ewes*, pp. 683, 684.)

[2] *Hatsell*, vol. ii., 3rd edn., p. 227; 4th edn., p. 239.

[3] *Ibid.*, 3rd edn., p. 231 n.; 4th edn., p. 243 n.

insight, the greatest of English Rationalists sums up the requirements for a parliamentary president: "Throughout the whole business the grand problem is to obtain, in its most genuine purity, the real and enlightened will of the assembly. The solution of this problem is the end that ought everywhere to be had in view. To this end everything that concerns the president ought of course to be subservient. . . . The duty and art of the president of a political assembly is the duty and art of the *accoucheur; ars obstetrix animorum*, to use an expression of the first Encyclopedist and his not unworthy successors;—to assist *nature* and not to force her —to soothe upon occasion the pangs of parturition—to produce in the shortest time the genuine offspring, but never to stifle it, much less to substitute a changeling in its room. It is only in as far as it may be conformable to the will of the assembly, that the will of this officer can, as such, have any claim to regard. If, in any instance, a person dignified with any such title as president of such and such an assembly possess any independent influence, such influence, proper or improper, belongs to him, not in his quality of president, but in some foreign character. Any influence whatever that he possesses over the acts of the assembly, otherwise than subject to the immediate control of the assembly, is just so much power taken from the assembly and thrown into the lap of this single individual."[1]

[1] *Bentham*, "Essay on Political Tactics," c. v., § 4 (vol. ii., p. 330).

CHAPTER IV

The Speaker's Deputies

IN the unavoidable absence of the Speaker a substitute takes his place in the chair. The House of Commons has not, as has been already observed, any presidential college such as is found in Continental parliaments, and, therefore, there are no vice-presidents who support the chair. The function of president is always discharged by a single member. The Speaker's deputy is, however, not chosen as such: under the rules, another member, elected for the performance of different duties, namely, the "Chairman of Committees," is *ex officio* deputy of the Speaker in the unavoidable absence of the latter: his regular duties and the mode of electing him will be described later. As the Chairman of Committees is elected at the beginning of a new parliament for the whole period of its duration, his position as Deputy Speaker is a permanent one. To meet the case of both Speaker and Chairman of Committees being unavoidably prevented from attending the House, the Chairman's substitute is, under Standing Order 81, authorised to act as a second deputy of the Speaker. He also is chosen, at the beginning of each parliament, to act for the duration of the parliament and acts as Deputy Chairman, or Deputy Speaker, if the need arises. In both cases the substitution takes effect as soon as the House is informed by the Clerk that the Speaker is unable to be present or when (under Standing Order 1) the Speaker requests the Chairman or Deputy Chairman to take the chair, it being unnecessary in the latter case for any formal communication to be made to the House. In both cases the substitute has the full powers of the Speaker: he is, in the case of the Speaker's unavoidable absence, to "perform the duties and exercise the authority of Speaker in relation to all proceedings of the House . . . until the next meeting of the House, and so on from day to day on the like information being given to the House, until the House shall otherwise order; provided

that if the House shall adjourn for more than twenty-four hours the Deputy Speaker shall continue to perform the duties and exercise the authority of Speaker for twenty-four hours only after such adjournment." All acts done by the Deputy Speaker, whether under general or special rules of the House, have the same effect as if they had been done by the Speaker himself, with the sole exception that he cannot appoint any person to an office for a longer period than that during which his own office of Deputy Speaker lasts. The Chairman of Committees receives in that capacity a salary of £2,500; the Deputy Chairman is also paid. The regular functions of the Chairman of Committees will be described elsewhere; it is enough to note, in this place, that his chief duty is that of taking the chair of the House in Committee. When he is acting as Deputy Speaker the resumption of the sittings of the House as such is effected by his leaving his place at the table and taking his seat in the Speaker's chair. A ruling of the Speaker has established the propriety of repeated exchanges of chairmanship between the Speaker and his deputies during the same sitting.[1]

HISTORICAL NOTE

Till 1855 there was no provision for a deputy of the Speaker. If the Speaker was ill or otherwise unavoidably kept away, the only thing to be done was to adjourn the House or committee, or, in case of a prolonged absence of the Speaker, to accept his resignation and elect a successor. It is one of the curiosities of the House of Commons that this state of the law could be borne without leading to any serious inconvenience. In 1853, at length, a select committee was appointed to consider and report upon the question of appointing a deputy for the Speaker; the growth of business and the lengthening of the sittings made it no longer possible to dispense with an alteration of the old law. In May of the same year the committee presented a very careful report "On the office of the Speaker."[2] They began by referring to the hazard likely to arise from the destruction or diminution of the prestige which had for a century and a half at least attached to the office. "This confidence and respect cheerfully paid to one man, selected by the House for the office, cannot be expected to attach easily to another, who may be his substitute for a few days." The Chair would suffer. "Your committee would, therefore, regard with apprehension any plan which might lead to the frequent absence of the Speaker." The very comprehensive historical

[1] Deputy Speaker Act, 1855, 18 & 19 Vict. c. 84; Standing Order 81.

[2] Report from the select committee on the office of the Speaker, 12th May 1853 (No. 478).

investigation made by the committee showed how few difficulties had ever been caused by the want of a *pro tempore* Speaker.[1] From 1603 to 1660 the Speaker was only absent on nine occasions; of these, five were for an hour or two only; between 1660 and 1688 there were two absences, from 1688 to 1760 only six, and from 1760 to 1853 only nine cases, all of short absences. In every case the House had been able to get over the difficulty by adjourning. The committee, however, remarked that it was notorious that occasionally, out of consideration for the Speaker, members had purposely abstained from making a House or had allowed it to be adjourned almost as soon as made. On the other hand, they drew attention to the great increase in the business of the House and the greater inconvenience that would be caused by an adjournment. The number of pages in the journal for 1818 was 427, that for 1848 was 1,013. The committee proposed that the Chairman of Committees, as a member already familiar with the proceedings of the House, should be appointed the Speaker's deputy. This was approved by the House, and in the first instance embodied in a standing order. But in order to enable the chairman to exercise all the functions of a Speaker, including those conferred upon him by statute, it was necessary to supplement the standing order by an act of parliament, the Deputy Speaker Act, 1855. The appointment of a second deputy was not ordered till the 2nd of May 1902, and was a part of the reform of the rules effected by the Balfour Cabinet. In the debate on the proposal, which took place on the 11th and 12th of February 1902 the necessity of the provision was recognised, the Chairman of Committees being already, in modern times, overburdened with business. It was, however, suggested from several quarters that the new presiding officer should receive a salary, so as to secure a material guarantee of the independence of the Chair. He does now receive payment for his services, though at first the Government did not accede to the proposal.

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[1] Hatsell had already remarked upon this circumstance seventy years before. ("Precedents," vol. ii., 3rd edn., p. 212; 4th edn., p 223.)

CHAPTER V

The Officers of the House of Commons [1]

THE staff of officers of the House of Commons now form a very numerous body. At their head stand the *Clerk of the House of Commons* and the *Serjeant-at-arms*. The office of the first named is the highest and most important official post in the House, and one of the most respected in the whole English civil service; its occupancy has long been a personal distinction and the recognition of eminent capacity. In the course of the seventeenth, eighteenth and nineteenth centuries numerous holders of the office have been eminent lawyers and leading authorities on the law of Parliament and parliamentary history. Elsynge, who made the procedure of the House of Commons the subject of literary treatment, was Clerk; Rushworth, to whom we owe the great collection of materials for the history of the Civil War, was Clerk Assistant, and as such, a personal witness of the most important proceedings of the Long Parliament. The two distinguished writers on whose systematic works our whole acquaintance with the historic and current law of Parliament is based, John Hatsell and Thomas Erskine May, were both Clerks of the Commons for long periods, and Sir Reginald Palgrave, the excellent and indefatigable editor of May's treatise, to whom almost as much praise is due as to May himself, held the same office for many years. No one could give a better description of the office than Sir Erskine May. He says :—

"The Clerk of the House is appointed by the Crown, for life, by letters patent, in which he is styled 'Under Clerk of the Parliaments, to attend upon the Commons.' He makes a declaration, under the Promissory Oaths Act, 1868, before the Lord Chancellor, on entering upon his office 'to make true entries, remembrances, and journals of the things done and

[1] See Report from the joint select committee of the House of Lords and the House of Commons, on the Houses of Lords and Commons permanent staff, 20 July 1899, No. 286.

passed in the House of Commons.'[1] He signs the addresses, votes of thanks, orders of the House, endorses the bills sent or returned to the Lords, and reads whatever is required to be read in the House. He is addressed by members, and puts such questions as are necessary on an election of a Speaker, and for the adjournment of the House in case of the absence of a Speaker. He has the custody of all records or other documents, and is responsible for the conduct of the business of the House in the official departments under his control. He also assists the Speaker, and advises members, in regard to questions of order and the proceedings of the House."[2]

The salary attached to the office is £2,000 a year, and an official residence is provided. A fixed salary has been paid since 1812 instead of the fees which had previously formed the Clerk's remuneration. The Clerk of the House is an officer of the Crown; his office is a patent office; he is, therefore, not appointed by the Speaker or by Parliament, but by the Treasury, *i.e.*, practically speaking by the First Lord of the Treasury, the Prime Minister.[3] A Clerk who has served the office and has retired, regularly receives a substantial pension. The learned investigations of the Clerks, and their accurate expert knowledge of the practice of the House, have been of the greatest service in the preliminary work of the different committees appointed to consider procedure reforms.[4]

The Clerk wears wig and gown and sits at the upper end of the table of the House; he leaves his place when the Speaker leaves the chair. By the side of the Clerk, on his left hand, and similarly attired, sit the two Clerks Assistant, who act as Clerks both when the Speaker is in the chair and when the House is in committee, the Clerk Assistant being the Clerk to the committee. The appointment and terms of service of these two officers are regulated by the House of Commons Offices Act, 1856 (19 & 20 Vict. c. 1); they are appointed by the Crown, on the recom-

[1] The clerks at the table are not allowed to make private notes as to events in the House. In the seventeenth century Rushworth, the Clerk Assistant of the day, was expressly forbidden to do so.

[2] *May*, "Parliamentary Practice," pp. 200, 201.

[3] The higher officers of the Lords, viz., the Clerk of the Parliaments and the Gentleman Usher of the Black Rod, are also Crown officials: Report (1899), Minutes of Evidence, Qq. 14–18, 255, 431–434.

[4] See, in particular, Sir T. E. May's evidence before the committees of 1848–1878.

mendation of the Speaker. The Clerks Assistant take minutes of the proceedings at the sittings, at the conclusion of which they are first printed as the report called the "Votes and Proceedings" and then collected together as the current journal of the House. All notices of questions, amendments, and motions are handed in by members to the Clerks at the table, and it is their duty, under the directions given by the Government, to prepare the "Notice Paper" which announces the day's work set before the House.[1] The salary of the Clerk Assistant is £1,800 a year, and of the second Clerk Assistant, £1,200.

The rest of the official work of the House of Commons and all the secretarial work in connection with the proceedings of committees is performed, under the direction of the Clerk of the House, in several offices by a number of officials and assistants. According to the system now adopted these officials are appointed by the Clerk from among the successful candidates at an examination conducted by the Civil Service Commissioners. They are divided into four classes—principal, senior, assistant and junior clerks. Their business is distributed among four departments, the Public Bill Office, the Journal Office, the Committee Office and the Private Bill Office. The pay of all the officers of the House is regulated by a commission appointed in pursuance of the House of Commons (Offices) Act, 1812 (52 Geo. III c. 11) and composed of the Speaker, the Secretaries of State, the Master of the Rolls, the Attorney-General and the Solicitor-General, or such of them as are members of the House of Commons.[2]

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[1] As to parliamentary papers see above, pp. 39 *sqq*. Continental students of Parliament should take special note of the fact that the House of Commons has never adopted the institution of secretaries chosen from its midst. Indeed, there is a great deal to be said against wasting the strength of representatives of the people in undertaking such merely technical work as drawing up minutes. Members are elected for the purpose of settling the matter of the proceedings, not for that of recording them.

[2] The appointment of the officials is entirely in the hands of the Clerk of the House; but his right, as Sir Reginald Palgrave himself pointed out, is qualified by the fact that the commission is at liberty to pay the persons so appointed, or not, as it pleases. It has, therefore, the "power of the purse." Report (1899), Minutes of Evidence, Qq. 243–247.

The *Serjeant-at-arms*, usually a retired naval or military officer, is appointed by the Crown, his duty, as officially stated, being "to attend upon His Majesty's person when there is no parliament; and at the time of every parliament, to attend upon the Speaker of the House of Commons." After his appointment, however, he is considered to be a servant of the House, and may be removed for misconduct. His position is described by May as follows :—

"His duties are to attend the Speaker, with the mace, on entering and leaving the House, or going to the House of Lords, or attending his Majesty with addresses. It is his duty to keep the gangway at and below the bar clear, and to desire the members to take their places, and not to stand with their backs to the Chair, nor to stand, nor remove from their places, with their hats on, when the House is sitting. He takes strangers into custody who are irregularly admitted into the House, or who misconduct themselves there; causes the removal of persons directed to withdraw; gives orders, to the doorkeepers and other officers under him, to lock the doors of the House upon a division; introduces, with the mace, peers or judges attending within the bar, and messengers from the Lords; attends the sheriffs of London at the bar on presenting petitions; brings to the bar prisoners to be reprimanded by the Speaker, or persons in custody to be examined as witnesses. For the better execution of these duties he has a chair close to the bar of the House, and is assisted by a deputy Serjeant. Out of the House he is entrusted with the execution of all warrants for the commitment of persons ordered into custody by the House, and for removing them to the Tower or Newgate,[1] or retaining them in his own custody. He serves, by his messengers, all orders of the House upon those whom they concern. He also maintains order in the lobby and passages of the House.

"It is another of the Serjeant's duties to give notice to all committees when the House is going to prayers. He has the appointment and supervision of the several officers in his department; and, as housekeeper of the House, has charge of all its committee-rooms, and other buildings, during the sitting of Parliament."[2]

He is entrusted with the care of the mace, the symbolic significance of which has already been frequently referred to. The police constables about the House are, so far as necessary, at the disposal of the Serjeant-at-arms or his deputy: there is a considerable body of them, the charge of guarding and maintaining order in the corridors and staircases and at the numerous entrances and approaches to the gigantic Palace of Westminster being in the hands of the

[1] Newgate prison has now ceased to exist.

[2] *May*, "Parliamentary Practice," pp. 204, 205.

Metropolitan Police: they have exercised very careful supervision since the time of the Fenian dynamite scare. The maintenance of order within the chamber itself is entrusted to the messengers: in all, save one, of the few cases in which refractory members have had to be removed, they alone have been called upon to act. But the Serjeant-at-arms would find no difficulty if he called for the services of the police. There has never been any special corps of parliamentary watchmen, nor, according to English ways of thinking, is there any need of such.[1]

Besides the chief officials whom we have enumerated, and whose offices have existed from the early and middle periods of parliamentary history, there are a number of new official posts which were only created during the course of the last century, some of them in connection with the reforms in private bill legislation. There is the chaplain, who reads the daily prayers at the beginning of the sitting; he is nominated by the Speaker and has a salary of £400; there are the examiners, each of whom receives £400 a year; they make preliminary investigation into the regularity of procedure in respect of private bills; and the special parliamentary shorthand writer, whose duty is to take down the evidence of witnesses at the bar or in committee, and to record the exact words of the Speaker for transcription into the journals. A special salary is provided also for the Speaker's legal adviser, the counsel to the Speaker. Lastly, we should mention the staff of the very considerable library of the House of Commons. A special office for the taxation of costs in private bill procedure must be mentioned in addition. The whole number of officials, of all ranks, on the present footing, is 126: the gross cost, including the salary of the Chairman, was in 1903 the sum of £55,576: the Speaker's salary and his predecessor's pension, being charged on the Consolidated Fund, are not included.

The annexed table gives particulars as to the staff of the House and the estimate of its cost for the year 1900[2]:—

[1] It must be remembered that the Home Secretary is the responsible chief of the London police, so that the force is entirely subordinate to the parliamentary Ministry.

[2] See Report (1899), pp. 42–45.

	£	£
I.—Chairman of the Committee of Ways and Means, Salary		2,500
II.—Department of the Clerk of the House:—		
A.—Salaries:—		
1 Clerk of the House	2,000	
1 Clerk Assistant	1,500	
1 second Clerk Assistant	1,200	
4 principal clerks (£850–£1,000)	3,825	
6 senior clerks (£650–£800)	4,517	
12 assistant clerks (£300–£600)	5,421	
12 junior clerks (£100–£250)	2,118	
1 collector of fees on private bills	500	
B.—Allowances for special work (night work, compiling indexes, &c.)	2,065	
C.—Subordinate officials:—		
1 office clerk in committee office	220	
1 office clerk in journal office	293	
4 senior messengers	590	
6 junior messengers	690	
Allowances and expenses	679	
—		25,609
50 persons.		
III.—Department of the Speaker (18 persons)	9,244	
Add for delivery of votes and parliamentary papers	915	
		10,159
IV.—Department of the Serjeant-at-arms (58 persons)	10,344	
Incidental expenses	3,040	
		13,384
V.—Witnesses and other committee expenses		700
VI.—Shorthand writers (for committees)		1,700
VII.—Police and miscellaneous expenses		4,217
Gross total		58,269
Deduct for fees		30,000
Net total		28,269

HISTORICAL NOTE

The offices of Clerk of the House and Serjeant-at-arms date back to the earliest period of parliamentary history. The first Clerk whose name appears in the journals belongs to the time of Edward VI, but there can be no doubt that from the time when the House of Commons took up an independent position by the side of the House of Lords, it had a special Clerk assigned to it by the Crown. The office of Clerk Assistant

did not become permanent till 1640.[1] The Clerk's pay at first consisted of £10 annually from the Treasury and certain fees on private bills: this method of payment lasted down to the close of the eighteenth century. In Queen Elizabeth's time it was still customary for all members to make a present to the Clerk at the end of the session.[2] He had to pay the other officers out of what he received, and also to provide the office expenses. The balance was his income. It may be imagined that the Clerks did their best to increase this balance, and that they strove hard to widen the scope of the idea of a private bill, with its accompanying fee. The difficulties caused by such efforts led, in 1751, to the adoption of certain resolutions, which were intended to give definite criteria for distinguishing public from private bills.[3] We may see how lucrative this kind of payment was for the Clerks from the fact that John Hatsell's income was estimated at £10,000 a year. Under the act of 1812, above referred to, payment by fees was abolished, the Clerk was placed upon a fixed salary, and the perquisites were transferred to the Treasury.[4]

Besides the sources of income above mentioned, the Clerk had at one time a right to nominate his deputy, the Clerk Assistant, and to be paid for the nomination. Hatsell estimated the price in the middle of the eighteenth century at £3,000. He also states that the Clerk Dyson, in George II's time, was the last from whom any payment was exacted. Dyson himself nominated Hatsell as deputy without payment, and thenceforward the post was no longer for sale. The appointment of the Clerk Assistant, and of the second Clerk Assistant, whose office was instituted at the time of the Union with Ireland, was transferred by statute to the Crown. The Clerk of the House has the power of appointing his other subordinates, subject to the conditions above referred to.

The Serjeant-at-arms, who has always been appointed by the Crown, was also for a long time paid by fees. Certain fines were also payable to him.[5] He has always been the executive organ of the House, assigned to it by the Crown, and placed immediately under the Speaker.

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[1] Hooker knows only the Clerk of the House. "There is only one clerk belonging to this House: his office is to sit next before the Speaker at a table upon which he writeth and layeth his books" (*Mountmorres*, vol. i., p. 122). Rushworth was the first Clerk Assistant (*Hatsell*, vol. ii., 3rd edn., p. 249; 4th edn., p. 263).

[2] See *D'Ewes*, Journals, p. 688: "The collection for the Clerk of twelve pence apiece, according to Mr. Wingfield's motion yesterday, was made and amounted to about twenty-five pounds." See further, *Hatsell*, vol. ii., 3rd edn., p. 266; 4th edn., p. 281: *House of Commons Journals*, vol. i., p. 351, &c. Ordered, "That no man should depart without paying the ordinary fee to the Clerk, 6*s.* 8*d.*"

[3] Fees for private bills had to be paid before second reading. If payment were omitted the officers were entitled to prevent the bill being read a second time (*Hatsell*, vol. ii., 3rd edn., p. 272; 4th edn., p. 288). Hatsell gives a full account of the growth of the fee system, vol. ii., 3rd edn., pp. 261–272; 4th edn., pp. 276–288.

[4] Report (1899), Minutes of Evidence, Q. 230.

[5] In the sixteenth and seventeenth centuries penalties were imposed for disorder and late attendance.

The chaplain of the House of Commons is a product of the Cromwellian parliaments. Originally there was no special service except at the opening of Parliament. In 1563 the Speaker began to read daily prayers: in 1659 a special preacher to the House was appointed with a salary of £50. In the time of William III the custom of providing for the chaplain at the termination of his office by obtaining for him from the Crown an appointment to a benefice was adopted: it was abandoned in 1835 owing to Hume's opposition. Since then the chaplain has been nominated by the Speaker.

CHAPTER VI

Committees of the House of Commons

THE services of the Speaker and his deputies, and those of the permanent officers who are at the Speaker's disposal are not the only auxiliaries to which the House has recourse for the despatch of its work: with a view to the efficient performance of its labours it is accustomed to appoint temporary composite bodies from among its own membership—we refer to its *Committees*. No deliberative or legislative body can conduct its business without having frequently to lead up to and prepare for a final decision by preliminary discussion; nothing can be more natural than to delegate such preliminary work to a representative body chosen from among its members, and of smaller size than the actual legislative assembly. This procedure is found in all places where corporate bodies have to come to conclusions, in the meetings of Estates in Continental countries as well as in the early and middle stages of English constitutional history. In Continental parliaments indeed the formation of committees of members for detailed preliminary discussion of all important matters, especially of legislative projects, is an invariable rule. The House of Commons presents, however, a remarkable contrast to Continental and American parliaments in its treatment of this typical department in the organisation of work. It is true that the House of Commons, from the earliest days, has had committees of varying size, always, of course, comparatively small; but they have performed functions essentially different from those entrusted to the committees of Continental legislative bodies. The reason is to be found in a characteristic feature of the British Parliament—common to both Houses—that *it has two forms in which each House as a whole considers the subjects which are brought before it.* Each House discusses legislative projects twice over, once "in the House," in the technical sense of the

word, according to the forms and with the number of readings prescribed by the rules, and once "in committee," as a committee of the whole House. The distinctive fact is that both forms of discussion take place in plenary assemblies of all the members. But in the second case the members discuss the question as "committees," *i.e.*, as members of a notional committee, only existing in a technical sense, the peculiar mark of which is that all members of the House are members of the committee. In a word, a committee of the whole House is in reality not a committee at all, but only the House itself deliberating in another form. The work which in Continental parliaments is done by genuine committees or commissions, that of thoroughly discussing financial and legislative proposals in detail, is done in England by the House when acting in this form, calling itself, but not really being, a committee. The explanation is, of course, a historical one; it is to be found in the parliamentary conditions of the past and will be discussed at greater length in the next chapter.

The real committees of the House of Commons are then, it is true, important auxiliary organs, but their function is only the preparation of legislative material for the information of the House; they are called upon to undertake work which so large a body as the House of Commons is incapable of performing, in particular to investigate concrete questions of fact or law, upon which the House wishes to have definite information. In other words, subject to the exceptions to be mentioned directly, English parliamentary committees are organs with purely deliberative and preparatory functions, and do not bring before the House complete proposals as to the text of a legislative project.

The above remarks will show that the genuine committees of the House of Commons have a much smaller scope than is given to the corresponding bodies in other legislative assemblies. But this characteristic is qualified by the existence of certain important exceptions, which materially extend the scope of the genuine committees: *two* of these exceptions must be specially mentioned. One concerns the modern institution of *standing* or *grand committees*, which are large standing committees, properly so called, and to

which, in certain cases, the work of a committee of the whole House is entrusted: the other is connected with an institution peculiar to the English parliamentary system, the extremely important machinery of private bill legislation. For the present purpose it is enough to summarise the nature of this branch of parliamentary activity by saying that private bill legislation is, in the main, internal central administration,[1] carried on by Parliament by means of acts of parliament. In this field the main activity of Parliament is handed over to the select committees appointed to deal with the various proposals brought before the House.

The scope of the committees of the House of Commons has now been pretty fully explained. From what has been said it is clear that what is generally called the committee work of the committee of the whole House ought not really to be spoken of by that name. The whole section of the rules which applies to this most important form of procedure will have to receive separate consideration. Of committees proper there are three kinds, viz., (1) Standing or Grand Committees, (2) Sessional Committees, and (3) Select Committees.

1. Standing Committees[2]

At the beginning of each session two large standing committees are appointed. One has to deal with bills relating to law, courts of justice and legal procedure; and the other with bills relating to trade, agriculture, fishing, shipping and manufactures. Each consists of not less than sixty nor more than eighty members who are nominated by a special committee of the House, the Committee of Selection:[3] in their choice regard is to be had to the political composition of the House, to the classes of bills to be dealt with, and to the personal qualifications of the members selected. As a rule, the number of members is

[1] By "internal central administration" is meant that part of the administration of the country by the central authority which consists in the laying down of special regulations for different localities.

[2] Standing Orders 46–50; *Manual*, pp. 72–76; *May*, "Parliamentary Practice," pp. 392–398. There has recently been a considerable extension in the use of Standing Committees: see Supplementary Chapter.

[3] See *infra*, pp. 185, 186.

sixty-seven, one-tenth of the House; this makes the selection easier. Sedulous care is taken to obtain a proportionate representation of English, Scotch, Welsh and Irish members, and of Conservatives, Liberals and Home-Rulers.[1] The Committee of Selection are further empowered to add not more than fifteen members to a standing committee in respect of any particular bill referred to it. The quorum of a standing committee is twenty. The chairman is determined in a somewhat circuitous way. At the beginning of each session the Committee of Selection nominate a chairmen's panel, consisting of not less than four nor more than six members; the panel appoint from among themselves the chairmen of the two standing committees, and they have power to change the chairmen so appointed. If a bill is to be referred to a standing committee an order of the House to that effect must be made on motion. The motion may be proposed at any stage, even after the bill has been partly considered in committee of the whole House; if made immediately after the second reading it does not require notice. As soon as a bill has been referred to a standing committee, the otherwise obligatory discussion in committee of the whole House falls to the ground.[2] Upon a motion to refer a bill to a standing committee debate must be strictly confined to the question of such reference, general debate on the merits of the bill not being allowed. There is no rule that all bills dealing with the subjects of legislation laid down for the standing committees are to be referred to them, nor is there any reference *eo ipso* of any class of bills to these committees. A special order is always needed. The form of deliberation and debate is the same as in a select committee, and will be described under that head. The usual time of sitting of the standing committees is the morning; they must not, without an order of the House, sit after a quarter-past[3] two while the House is sitting.

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[1] See *Mowbray*, "Seventy Years at Westminster," p. 276. The three party leaders are regularly left out; on the other hand, the Secretaries of State and the Presidents of the Board of Trade and the Local Government Board are *ex officio* members of the standing committees.

[2] See some further remarks in the Supplementary Chapter.

[3] Now (1907) three o'clock: see Supplementary Chapter.

Their proceedings are public except by order of the committee; anybody may be present.

It was hoped by the institution of standing committees to lighten the burdens of the House as a whole by diminishing the number of committees of the whole House. This result has not yet been realised in practical working. Tradition has proved too strong; moreover, the standing committees are so large, that any extensive activity on their part would draw away so many members from the general labours of the House as to produce a prejudicial effect on its work as a whole. The practice at first was to refer to these committees only non-contentious bills, or, at all events, only such as raised differences of opinion as to details rather than as to principle. In the last few years this rule has been to some extent disregarded, with the result of evoking prolonged debates and divisions on the stage of report from standing committee. Until recently the number of bills annually disposed of by these committees has been but small, and they have only had a trifling influence on the practical arrangement of the work of the House.

2. Sessional Committees[1]

In addition to the large standing committees, intended solely for legislative work, there are certain other regular standing committees, consisting of a small number of members, which are chiefly concerned with the internal organisation of the House. They are appointed at the beginning of each session and hold office until its close. They are the following:—

(*a*) The *Standing Orders Committee.* It consists of eleven members, and elects its own chairman from among its members: five are a quorum. The function of the Standing Orders Committee is to determine whether, and to what extent, and under what conditions, compliance with standing or sessional orders may be dispensed with in the case of

[1] Standing Orders (private bills) 91–97, 99–104; Standing Orders (private business) 75, 79; *Manual*, pp. 88–92, 293, 294; *May*, "Parliamentary Practice," pp. 405, 716, 752.

private or hybrid bills, and to perform certain other duties of a similar kind in relation to such bills.

(*b*) The *Committee of Selection*, to which reference has already been made in several places. This committee consists of the chairman of the Standing Orders Committee, who is *ex-officio* chairman, and ten other members: three are a quorum. The work of the committee is continuous organisation. It has to marshal the House for disposing of private bills: it appoints as many select committees as are needed for dealing with them, nominates a chairman for each committee, and makes arrangements for their sittings and business. It has also, as mentioned before, to settle the composition of the two standing committees on law and on trade. It has not only to appoint the committees, but has also to keep constant watch over their efficiency. It has, therefore, to decide upon the adequacy of the excuses made by members who do not wish to act upon any committee. The Committee of Selection is instructed to give any member appointed to serve on a select committee seven days' notice of the week in which he is to be in attendance and to send to him, for signature and return, a blank form of declaration that neither he nor his constituency is interested in the bill referred to his committee. If he does not sign and return the declaration he is bound to send a sufficient excuse: in case of his neglect, the Committee of Selection must report his name to the House. The other functions of this committee connected with private bill legislation belong to a description of that branch of parliamentary work: what has been said is enough to show that it is one of the most important organs of the House, and is a characteristic part of the whole arrangement of its work. It therefore stands to reason that only the oldest and most experienced members of the House and those specially conversant with private bill legislation are placed upon the Committee of Selection or upon the Standing Orders Committee. They are technically chosen by a free vote of the House, but, practically speaking, they are agreed upon and nominated by the Leader of the House and the Leader of the Opposition. The burden placed upon the Committee of Selection, especially upon its chairman, has increased enormously in modern times, and the

task entrusted to it is of the highest importance. The qualifications for membership are exact knowledge of the rules of the House and of its composition, and intimate acquaintance with the personality of all its members; the greatest care has always to be taken to obtain for the work of the select committees a proper representation of all political parties, and of the local and other tendencies and interests which are to be found in the House. Eloquent testimony to the manner in which the Committee of Selection has long done its work is to be found in the rarity of the occasions upon which a vote has to be taken, and in the entire absence of party cleavage in its deliberations.[1]

(*c*) The *Committee on Railway and Canal Bills*, consisting of about eight members, and its chairman are appointed by the Committee of Selection; it has, with respect to railway and canal bills, certain functions resembling those of the Committee of Selection with respect to other private bills.

(*d*) The *Committee of Public Accounts* consists of not less than eleven members nominated by the House (five being a quorum); their duty is to examine the accounts showing the appropriation of the sums granted by Parliament to meet the national expenditure.

(*e*) The *Committee on Public Petitions* consists of fourteen members; they examine all public petitions after they have been presented, and make periodical reports to the House.

(*f*) The *Committee of Privileges* should be mentioned here. Following the tradition of centuries, at the commencement of every session an order is made "that a committee of privileges be appointed." But until quite recently no members have been appointed, and no sittings are held until some concrete case requires investigation.[2]

(*g*) In 1903 a committee, which had been discontinued for some years, was revived under the title of the *Police and Sanitary Committee:* it is appointed by the Committee of Selection. To this committee are referred all private bills promoted by municipal and other local authorities by which

[1] *Mowbray, loc. cit.*, pp. 267 *sqq.* Sir John Mowbray was the chairman of these two committees from 1867 to 1899.

[2] As to the old committees of privileges see *infra*, pp. 207 *sqq.*

it is proposed to create powers relating to police or sanitary regulations in conflict with, deviation from, or excess of the provisions of the general law.

3. Select Committees[1]

The third and most numerous class is that of select committees. As mentioned before, the chief use of committees of this nature is to deal with the work of private bill legislation. But for the rest of the business of the House also, its public business, select committees are indispensable, serving the purposes indicated above. They are the special part of the mechanism of the House which is set in motion for the study of a subject and the devising of plans for its treatment: till the nineteenth century the House had no other appropriate organ. They are applicable to the consideration of a proposal for legislation, or of an administrative measure which needs to be discussed, or to ascertaining the condition of national or imperial administration, or again, to an inquiry into the procedure of the House itself. The task of a select committee is accordingly investigation and nothing more: it stands in the sharpest contrast to the work of a committee of the whole House. Still such committees are indirect aids to legislation, inasmuch as they arrange the material upon which legislative decisions are eventually based, and they help to focus the ideas of the House upon matters of principle, or to work out the technical details of some legislative course of action the principle of which has been accepted. As, then, select committees are first and foremost committees of investigation, they (and they alone among committees) have regularly entrusted to them a group of powers which as a rule are retained for exercise by the House itself, namely, the right to require the attendance of witnesses and to examine upon oath, the power of sending for all documents, papers, and records relevant to the matters referred to them, and that of insisting upon the production of any such papers by witnesses.

[1] Standing Orders 54–64; *Manual*, pp. 76–86; *May*, "Parliamentary Practice," pp. 400–422. Rules and orders (1896), ss. 325–350.

Select committees may be divided into two classes, the first including those appointed to consider particular private bills, and the second all others. The committees in the two classes have different modes of composition, different procedures and different powers. As to committees connected with public business the following rules as to mode of composition are to be observed. A motion for the appointment of a select committee may be made at any sitting of the House at a time fixed by the rules: in ordinary cases previous notice is required. Further, any member intending to move for the appointment of a select committee must give a day's notice of the names of the members whom he intends to propose as members of the committee, and must endeavour to ascertain previously whether each of such members is willing to attend. The names must be placed on the notice paper and be posted in certain prescribed places in the lobbies.[1] Motions to increase or diminish the number of members on a select committee cannot be brought on without notice on the paper.

There are, however, other methods of settling who are to be the members of a select committee. At times the House delegates the choice either wholly or in part to other organs, especially, of late, to the Committee of Selection. This is the rule with respect to "hybrid" bills.[2] The nature of these committees of investigation, as described, leads to their composition being as a rule independent of political interests and of party considerations. The work of the committees is, almost invariably, concerned with the determination of questions of fact, or with the formation of definite, possibly even of contradictory, views and judgments based upon facts and the opinions of experts. As a rule, therefore, the dividing lines in a select committee are

[1] Committees on matters of privilege and committees to draw up reasons for disagreeing with Lords' amendments are not subject to the rules about notice (*Manual*, p. 77). Motions for committees may be made on Tuesdays and Wednesdays, and, if set down by the Government, on Mondays and Thursdays also (Standing Order 11).

[2] A hybrid bill is a public bill, which affects private interests in such a way that if it were a private bill it would require preliminary notices: the procedure on such a bill is of a special kind, partly based on the private bill procedure.

drawn with reference to the particular matter in hand: mere political party fights seldom occur there. They are not intended to serve the ends of party tactics, but to be of real assistance to the work of the House.

The number of members on a select committee is not, without the leave of the House, to be more than fifteen; but for special reasons such leave may be given.[1] The quorum is fixed by the House at the time of appointment: as a rule five is the number. If at any time during the sitting the quorum is not present, the clerk of the committee must call the attention of the chairman to the fact, and the chairman must thereupon either suspend the proceedings until a quorum is present, or adjourn the committee. The chairman is appointed by the committee at its first sitting. Lists of all members serving on the various select committees are affixed in conspicuous places in the committee office, and in the lobby (Standing Order 58). The procedure observed in the deliberations of a select committee is generally modelled on that of the House. There is, however, one all-important difference; in committee members are allowed to speak more than once on each point. Such a rule is obviously necessary for carrying on a committee, the very purpose of which is the elucidation of all differences of

[1] The following table shows the number of select committees of the House of Commons from 1878 to 1903, and the number of members who served on them:—

Year.	No. of select committees.	No. of members.	Year.	No. of select committees.	No. of members.
1878–1879	33	238	1892	31	277
1880	44	320	1893–1894	31	344
1881	32	259	1894	31	378
1882	31	444	1895	32	373
1883	19	411	1896	25	351
1884	32	541	1897	24	325
1884–1885	30	253	1898	22	362
1886	39	431	1899	17	309
1887	38	306	1900	19	381
1888	41	385	1901	20	342
1889	35	351	1902	21	342
1890	39	355	1903	18	338
1891	26	296			

opinion and the thorough discussion of every detail. In respect of motions, amendments, putting questions and taking votes, the chairman has to observe strictly the methods laid down by the House in its rules as interpreted by the Speaker. This does not apply to select committees on private bills, which work under special rules applicable to them only.

Except that a committee may not, without special leave, meet upon a day when the House is not sitting, a select committee has full control over the time and length of its sittings, and may terminate them or adjourn at its own discretion. Sometimes, too, a committee is authorised to change its place of meeting for the purpose of making local investigations at different places.

The effect of the sittings of the House upon those of select committees has been entirely changed in recent times. It used to be the rule that at the moment when the House went to prayers, the sittings of all committees must come to an end, any decisions arrived at or proceedings taken thereafter being null and void. To warn committees of their approaching termination, the Serjeant-at-arms was instructed to announce in a loud voice, as he preceded the Speaker to his seat before the opening of business, that the House was about to proceed to the daily prayers. The warning is still given, though its cause no longer exists. According to the present rules, the practice is precisely inverted; select and all other committees except the two standing committees may sit whilst the House is sitting, and may continue even when an unexpected adjournment takes place. Committees are, however, not allowed to begin a sitting on any day after the House has adjourned; though by special leave a committee may sit even during the time of an adjournment.[1]

As already stated, select committees are appointed for the purpose of considering the merits of some question referred to them, of taking evidence on the subject, and of making recommendations to the House on the strength of such evidence and of any further advice and assistance

[1] *May*, "Parliamentary Practice," p. 413; *Manual*, pp. 79, 80.

which may have been procured.[1] Occasionally a public bill is referred to a select committee; but the practice, so customary on the Continent, of handing over a whole legislative project, before or after second reading, to a special committee, to be discussed and put into proper shape, is practically unknown to the House of Commons. In England the function of thoroughly discussing a draft law and settling all its details has for the last two hundred years been almost exclusively performed by a committee of the whole House or, in recent years, by one of the two standing committees on Law and on Trade. When there is a reference of a public bill to a select committee, its report is again only of an informing nature, and does not constitute a stage in the legislative process. It is, therefore, the rule that such a bill must be sent back to the House, to be thence again referred to a committee, either of the whole House or a standing committee. A second committee stage must be gone through before the bill is ripe for third reading.[2]

The main connection between the work of select committees and legislation is that bills are often framed by the Government or by private members in accordance with the recommendations of a report, or upon some line indicated in the course of such a document. It is not surprising, when we consider the inquisitorial function exercised by parliamentary committees, to learn that power is frequently given to them to summon witnesses and examine documents and papers, whenever it is required for the investigation of a matter referred to them. Such a power is not inherent in

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[1] The definition given by the *Manual* (p. 76) is as follows:—"A select committee is composed of certain members appointed by the House to consider or take evidence upon any bill or matter and to report their opinion for the information and assistance of the House." Before the adoption, in 1875, of Standing Order 63 select committees had to obtain special permission in every case to report their opinion and the minutes of evidence taken before them.

[2] The only public bills which are referred at times to select committees are those dealing with a number of concrete details. Chief among these are the collective bills for the confirmation of provisional orders laid before the House by different ministers, and only technically regarded as public bills.

a committee, but in most cases it is given as a matter of course.[1]

This seems to be a suitable place to sketch in outline the law as to the calling of witnesses by the House of Commons.[2] The House can at any time call upon any British subject to appear before it at the bar, either as a witness or to answer an accusation. A select committee may also, by delegation, have a like power. An order to attend is signed by the Clerk of the House, or the chairman of the committee:[3] in the course of the nineteenth century the calling of a witness to attend at the bar of the House gradually fell into disuse; at the present day examination before a committee is the rule.[4] If a person summoned as a witness fails to put in an appearance the committee report the fact to the House; if he is in prison the Speaker can, in pursuance of an order of the House, issue a warrant to the keeper of the prison requiring him to bring the prisoner in safe custody to be examined. If a witness refuses to appear he is guilty of a contempt and is liable to the punishment attached to a breach of the privileges of the House. He can be taken into custody and called to immediate account.

The House and its committees may administer an oath to any witness examined before them. If any person so examined wilfully gives false evidence he is liable to the penalties for perjury. The oath may be administered by the Speaker or by a person appointed for that purpose either by him or by any standing or other order of the House. In practice it is generally the chairman or clerk attending the committee who discharges this function. All rules protecting the purity of evidence given before a court of justice, and all penalties applicable thereto, have been extended to cover evidence in Parliament.[5] Persons summoned to give

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[1] Such a power would only be refused to a committee if it appeared that the cost would be disproportionate to the importance of the subject.

[2] Standing Orders 86 and 87; *Manual*, pp. 197–201.

[3] If a witness should be in custody the Speaker's warrant to the keeper or sheriff must be strictly complied with. (*May*, "Parliamentary Practice," p. 425.)

[4] We may here note that power to compel the attendance of witnesses is not, as a rule, conferred on private bill committees.

[5] Parliamentary Witnesses Oaths Acts, 1871 (34 & 35 Vict. c. 83).

evidence are carefully protected against any evil effects from their fulfilling their duty to speak the truth. A special act of parliament, the Witnesses (Public Inquiries) Act, 1892 (55 & 56 Vict. c. 64), threatens fine and imprisonment to anyone who threatens, punishes, damnifies, or injures any person for giving evidence to a committee (or a royal commission) or on account of the evidence given by him; and a sessional order of the House declares that tampering with a witness or endeavouring to deter or hinder any person from appearing or giving evidence is a "high crime or misdemeanour" and "that this House will proceed with the utmost severity against such offender."[1]

It will easily be believed that, with such an equipment, special committees have for hundreds of years been able to collect most valuable material for the promotion of legislation, to digest it and place it at the disposal of the House. The importance of parliamentary committees in this particular direction has, however, been materially lessened during the nineteenth century by the growing popularity of *royal commissions* as means for conducting enquiries. Though members of both Houses of Parliament take a prominent part in the work of such commissions, they are not appointed by Parliament, but by the Government. Almost all the great reforms of the nineteenth century in internal administration, taxation, education, labour protection and other social questions, have been based on the full investigations made by royal commissions, often continued over a space of many years, and on their reports which, with the evidence collected, are laid before Parliament. A royal commission has many advantages over a parliamentary committee; it can, while a parliamentary committee cannot, prolong its work beyond the limits of a session, if necessary even for years; and it is possible to appoint scientific experts as members so as to secure a completely impartial treatment of the subject; the consequence is that commissions have largely superseded parliamentary committees when elaborate enquiries have to be made.

[1] *Manual*, p. 289. It may easily be imagined how important such provisions may be in the case, for instance, of an enquiry into the relations between employers and workmen.

In addition to work of this nature, which, so far as legislation is concerned, is merely preliminary, select committees have a no less important sphere of usefulness in the investigation of grievances of a public nature, raised either by public opinion, or by some definite motion in Parliament. Chief among these are complaints as to particular branches of administration ; but there are also, from time to time, special public occurrences to be studied, either in the interests of the state or in compliance with the wishes of the House. At the present day this is the main function of select committees if we leave out of consideration those upon private bills.[1] When making their enquiries select committees act in a quasi-judicial manner, and their right to summon witnesses, administer oaths and call for papers is therefore, in such cases, of the highest importance. They are also empowered, for such objects, to hear advocates on behalf of persons whose interests may be affected by their investigations.

There is one obvious limit to the power of a committee to demand the production of documents ; any papers or documents which the House itself could only obtain by the method of an address to the Crown cannot be called for by a committee.

The evidence of witnesses examined by a committee is taken down in shorthand, printed day by day and supplied to the members of the committee ; the witnesses also have copies sent to them for any grammatical or verbal revision that may be needed. To every question asked of a witness under examination in the proceedings of any select committee, there must be prefixed, in the printed minutes of the evidence, the name of the member asking the question. This ensures full publicity to the transaction. The names of the members present each day must be entered on the minutes and reported to the House ; as also, in the event of any division, the question proposed, the name of

[1] The following are instances :—Select Committee on the Imprisonment of a Member, 1902 ; Select Committee on the Sale of Intoxicating Liquors to Children Bill, 1901 ; Select Committee on the Future Civil List of the Sovereign, 1901 ; Select Committee on the Cottage Homes Bill, 1899 ; Select Committee on the Aged Deserving Poor, 1899, &c., &c.

the proposer and the respective votes thereon of all the members present. What takes place in committee is by rule kept strictly private until a report is made by the committee to the House. In particular, no clerk or officer of the House, or shorthand writer employed to take minutes of evidence, may give evidence elsewhere in respect of any proceedings or examination before any committee without the special leave of the House.[1]

The rules of the House as to the presence of strangers at meetings of committees are very liberal; until the committee withdraws for deliberation, while witnesses or experts are being examined, the proceedings are public.[2] Members of the House who are not upon the committee would, if they stood upon their rights, be entitled to stay for the discussion, but it is a strict rule of parliamentary etiquette that they also should withdraw before it begins. Now and then a secret committee is appointed; when this is done everybody who is not a member of the committee, even a member of the House, is kept out.

The framing of the report of a committee is the last stage of its work. The chairman usually drafts the report, but an alternative may be submitted by any other member. A draft report when submitted is taken as read. The chairman then puts the question that his draft be now taken into consideration; upon this an amendment may be moved to consider an alternative draft. When the draft for consideration has been decided upon, it is taken paragraph by paragraph and debated and voted upon; and amendments may be moved and taken to a division. The last question put is "that this report (*or* this report as amended) be the report of the committee"; this corresponds to the third reading. Very often a minority report is made as well as the majority report. The chairman presents the report of the

[1] See resolution of the 21st of April 1837 in "Rules and Orders" (1896), s. 349; *House of Commons Journals*, vol. xcii., p. 282; see *May*, "Parliamentary Practice," p. 416. Leave is sometimes given to parties appearing before a select committee to print the evidence from day to day.

[2] See *May*, "Parliamentary Practice," p. 408. Ruling of the Speaker, "It is open to any select committee to exclude strangers at its own discretion, but they cannot exclude members of this House without first obtaining the order of the House to that effect." (*Hansard* (247), 1958.)

committee to the House by bringing it to the table. To this report, which is the proper object of the committee's work, there are generally added the shorthand minutes of evidence, and there is often an appendix, containing extracts from the writings, papers and records, on which the text of the report itself is based. With the permission of the House, *interim* reports may be presented from time to time, winding up with a final report at the end of the inquiry. The consideration of a report and any decisions consequent thereon are put down upon the notice paper as an order of the day. When this comes on a motion may be made to refer the report back and recommit the matter. The ordinary course is for the House to receive the report and to order it to lie upon the table and be printed.

It remains, finally, to explain the *legal* relation of a committee to the House as a whole. The main principle to be attended to is that a committee only exists, and only has power to act, so far as expressly directed by the order of the House which brings it into being. This order of reference is a firm bond, subjecting the committee to the will of the House; the reference is always treated with exactness and must be strictly interpreted. A select committee therefore always acts under a special, not a general, authority. The House may at any time dissolve a committee or recall its mandate, and it follows from the principle laid down that the work of every committee comes to an absolute end with the close of the session. It has often happened that a committee has been appointed in a subsequent session with an identical purpose; but the reappointed committee is considered to be a new body and may not base its report upon the uncompleted material collected in the previous session; at most, it may print it as an appendix to its own report. It is, however, possible for the House to evade the strict interpretation of the isolation of sessions, by ordering the material which has not been worked up into a report to be laid before the new committee, and then specially directing such new committee to report upon what is thus brought up.

The relation of mandator and mandatory, which subsists between the House and a committee, is most clearly

expressed in the parliamentary institution known as an *instruction*. The close confinement of a committee to its special authority may lead to difficulty in two ways : it may prove desirable to extend the scope of action of the committee in some specified direction, or, on the other hand, it may appear to the House that the reference, in spite of its special wording, is too wide and needs limiting in some direction. An instruction provides the remedy in both cases ; it is a motion which, as its name implies, gives the committee a specific direction as to its work. A motion of this kind requires notice, and must be made an order of the day. If adopted, it binds the committee strictly.

4. Joint Committees [1]

Lastly, short reference must be made to one more variety of committee, which, properly speaking, lies without the sphere of the House of Commons. This is a joint committee formed by the two Houses from delegations out of both. Such a committee is made up of equal numbers of Lords and Commons. The foundation for a joint committee is laid by a message from the Commons to the Upper House, and the acceptance of the suggestion by the Lords, or *vice versâ*. From the nature of such a committee it follows that no binding commission can be given to it by either House alone.[2] The time and place of meeting are fixed by the House of Lords, and the procedure is that observed in select committees of the Lords. If a bill is referred to such a committee, the bill as reported must go again before a committee of the whole House, and pass through all the other stages of the process of legislation. Committees of this kind are rare ; practically speaking, they are chiefly made use of for the discussion of private or hybrid bills, or of the provisions regulating the communications between the two Houses. At times, too, the House of Commons authorises a select committee to act in union with a similar committee appointed by the other House.

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[1] *Manual*, pp. 86–88. As an example of such a committee, see Report of joint committee on the presence of the Sovereign in Parliament, 1901.

[2] *May*, "Parliamentary Practice," p. 421.

5. Committee of the whole House[1]

To complete our survey of the organisation of the House from a legal standpoint we must return to our remark that the House of Commons as a whole has two different forms of debate. The historical account of this arrangement will occupy us elsewhere; here we are only concerned with existing rules; all that we have to do is to show in what respects the second, the committee procedure of the House, differs from that in the House strictly so called. It is especially important to explain in what way the committee procedure is regulated by the rules, and what position it occupies in the general arrangement of work.

The procedure, as the name implies, consists in the House regularly, in one matter after another, appointing itself a committee, so that though no physical alteration is made in the deliberating body, its legal character is changed. To all outward appearance the committee is only a form, a legal fiction; the great change which takes place on the House resolving itself into a committee is effected by a few special rules which come into force and govern the debate and the deliberations of members.

As to the occasion for constituting such a committee, *i.e.*, for changing the House into a committee, and as to the limits of action of such a committee, we may say, at once, that no single subject of discussion is, on principle, outside the purview of a committee of the whole House. But nineteenth century practice has laid down a definite limit to the competency of these committees. Their proper function is to decide after debate, not, as frequently in earlier days, to investigate some particular state of affairs.[2] On certain points a debate in committee is specially prescribed; it is an express rule that all proposals as to taxes or grants, or, indeed, any matter concerning the income or expenditure of the nation, must be considered in a committee of the whole House, before the measures for giving effect to them are brought before the House. Lastly, it is the rule that every

[1] Standing Orders 51–53; *Manual*, pp. 66–72; *May*, "Parliamentary Practice," pp. 380–392.

[2] See the latest instances from the beginning of the nineteenth century in *May*, "Parliamentary Practice," pp. 382, 383.

public bill of first class importance must be discussed in committee of the whole House.[1]

The beginning of a committee of the whole House must, by its nature, be a merely formal act. In the actual course of events it is a piece of the day's work of the House, and, consequently, an item in the list of business forming the programme for the sitting. It may come about in two ways. The constitution of such a committee may be a part of the order of business previously fixed for the sitting, or a motion may be brought forward without notice, in the course of a debate proceeding in a regular way, that the House do at once take up the discussion of some subject in the form of such a committee.

It is, no doubt, theoretically possible to form a committee of the whole House at any moment, but the chance of doing so is very materially diminished by the rules fixing the order of sittings and the daily programme. As a rule, the resolving of the House into committee takes place in accordance with the day's programme; there are, again, two ways in which this can take place: (1) there is the case of an order having been made that the House will resolve itself into committee on a fixed future day to consider some subject; in this case the committee stands as an order of the day on the day so fixed; (2) there is also the case that, under certain general rules, certain definite subjects have to be dealt with by committees of the whole House without any special motion. The latter case includes the whole action of the House in dealing with the estimates and all bills dealing with taxes and state disbursements. More detailed statements on these subjects may be deferred to the chapters on the day's programme and on financial procedure.

The passage from the House to committee stands the more in need of definite acts to mark the instant of its occurrence, because, to outward appearance, it is nothing but a legal fiction. The chief accompanying circumstances in attaining this object are three.

1. The chairman is changed. In place of the Speaker the permanent Chairman of Committees, chosen at the

[1] See Supplementary Chapter.

beginning of a new parliament, presides. The Speaker and the Clerk of the House leave the chamber.

2. Another symbol of the change is the removal of the mace. When the House is resolved into a committee, the mace, which till then has been lying, visible to all, upon the table, is placed in a receptacle below it and hidden from view.

3. The Chairman takes his place at the upper end of the table in ordinary dress, wearing neither wig nor gown. The Speaker's chair remains empty.

If a sitting lasts for a long time the chair may be vacated by the permanent Chairman; so far as the rules go, any member may then be called to the chair, and it is customary for some minister who happens to be present to propose a chairman. The new rules, however, as already mentioned, provide for a permanent deputy for the Chairman.

The quorum for the House, as a committee, is the same as before, namely, forty.[1] The procedure in committee is the same as that of the House except in three points: (1) no seconder is required for a motion; (2) the "previous question" cannot be moved;[2] (3) members are not confined to one speech on each question. Closure in committee can only be applied when the Chairman or Deputy Chairman is presiding. In the absence of the Chairman of Committees the chair is ordinarily taken either by the Deputy Chairman or by one of the temporary chairmen, but is occasionally taken by some other member; in the last case, if any objection is taken to the member proposed acting as chairman, the Speaker resumes the chair and a chairman is appointed by the House.[3]

The duration of the sitting of a committee of this kind is subject, like any other sitting of the House, to the general provisions of the rules. In addition, there is a special procedure by which the sitting of a committee may be closed

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[1] *Scobell* ("Memorials," p. 36) mentions this rule in 1670.

[2] See as to the "previous question," *infra*, p. 227.

[3] Till 1800 there was no salaried Chairman of Committees; but it had been customary from the time of the Revolution onwards for the chairmanship of the two most important committees—Supply and Ways and Means—to be entrusted to the same person for several years. Since the middle of the eighteenth century his title has always been the "Chairman of Ways and Means."

and the committee re-transformed into the House proper. The principle applicable is, that a committee of the whole House is not entitled on its own authority to close or adjourn its sitting or debate. This, of course, is another fiction, for the House and the committee are composed of the same persons. Moreover, in this rule we have a deviation from the ordinary committee type, for, as stated above, committees in general can always adjourn their sittings. The reason is that in this single respect the committee is considered to be equivalent to the House, and to be subject to the old rule, only recently modified, calling for a definite order of the House to put an end to a sitting. The fiction of absolute dependence, which is thus expressed, leads to yet another fiction, that of a "report" to the House with the further request for leave to resume its sittings. The end of a sitting of the committee, therefore, is marked by the Chairman making a report to the House, and asking for leave to sit again. There is a fictitious assumption that the House must be informed of the proceedings of the committee in order to justify, from the report made, the grant of leave to resume work. These formalities, which, by reason of the House and committee being in fact composed of the same persons, seem almost comical and useless ceremonies, serve the purpose of marking off distinctly the committee stage of a matter from the rest of the business of the House. But their real object, as will be shown later when we come to deal with the discussion of legislative projects, is to serve as occasions and opportunities for the parliamentary tactics of the parties in the House. To a certain extent they are pegs upon which to hang important parliamentary functions.

The resumption of the sitting of the House is marked by the return of the Speaker, and the replacing of the mace on the table; the report of the Chairman to the House as to what has taken place in the committee concludes its proceedings. There is a fictitious assumption that the Chairman in making his report, is giving the House information which it does not already possess. The customary motion in committee to report progress is equivalent to a motion to bring the sitting of the committee to an end. It has to be moved in a strictly prescribed form of words, namely, "that the

Chairman do report that the committee has made progress and ask leave to sit again." This form is analogous to a motion in the House for an adjournment of the debate; if it is accepted the proceedings of the committee are merely suspended, not terminated. The mode in which the report is made is that the Chairman turns to the Speaker and makes the formal communication that "the committee has made progress and asks for leave to sit again on a future day." There is also another motion which may be brought forward in committee at any time, and which also has the effect of bringing its sitting to an end, namely, "that the Chairman do now leave the chair." The carrying of such a motion has a more far-reaching effect; it causes the order of the day—for the discussion of such and such a subject in committee of the whole House—to drop entirely; a renewed order for the constitution of the committee must be made by the House before the discussion can be resumed. In the former case the request to the House for leave to sit again and its being granted, secure the continuance of the committee's work. If the request for leave to sit again were left out of the first formula the same result would be reached as is produced by the second, *i.e.*, complete stoppage of the committee proceedings. The motions referred to are made and decided in the committee itself, or, as it might perhaps be more accurately stated, in the House when wearing its committee aspect.[1] Practically speaking they are, as already stated, the technical machinery for changing from the one form to the other.

[1] The constant alternation of these two motions—they could not be moved twice in succession—used to be one of the regular methods of obstruction; but this has been checked by the new rules.

CHAPTER VII

History of Committees in the House of Commons

THE development of the committee organisation of the House of Commons, the present stage of which we have just been sketching, is one of the most remarkable chapters in the story of Parliament, and has been deeply influenced by some of the most important events in English constitutional history. The earliest period of the House of Commons yields unquestionable though scanty information as to the co-operation of committees in the work of Parliament. The regular choice of Triers and Examiners of petitions, which began in Edward I's reign, and of which we have already said all that is necessary, may be looked upon as a first stage towards the appointment of committees. The first duty, however, for the discharge of which a committee seems to have been regularly appointed by the Commons, was the drawing up of statutes to carry into effect the prayers of petitions introduced in Parliament and acceded to by the Crown. Thus in 1340 a joint committee of Lords and Commons was appointed for this purpose.[1] In 1406 it was requested that "certeins de les communes" should be present upon the engrossing of statutes.[2] In 1341 a committee was appointed to investigate the accounts showing how the last subsidy had been spent.[3] From the very beginning of the journals and reports of the sittings of the House of Commons, *i.e.*, from the middle of the sixteenth century, committees appear as regular parts of the machinery of the House. The usual course was to entrust one or two members with legislative proposals, for report or formulation.[4] Contemporaneously we find special committees appointed for conferences with the Lords, to investigate questions of fact or law, or, as for instance in the first year of Queen Mary's reign, to consider the eligibility of a member One characteristic feature of the parliamentary usage of those days was the election of committees to revise the text of bills upon which the House had agreed, and which had to be brought before it again for ratification in the improved form devised by the committee. Sir Thomas Smith, in the excellent work in which he lays down the practice of Parliament about the middle of the sixteenth century[5] gives this information and goes on to describe exactly the position of the committees. "It chanceth sometime," he says, "that some part of the bill is allowed, some other part hath much controversy and doubt made of it; and it is thought if it were amended it would go forward. Then they choose certain com-

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[1] *Rot. Parl.*, vol. ii., p. 113.

[2] *Ibid.*, vol. iii., p. 585.

[3] *Ibid.*, vol. ii., p. 130.

[4] For an instance see *House of Commons Journals*, vol. i., p. 5, "the bill for levying of fines in the county palatine of Chester,—committed to Mr. Hare, &c."

[5] "Commonwealth of England," book ii., chapters 1–3.

mittees[1] of them who have spoken with the bill and against it to amend it and bring it in again so amended as they amongst them shall think meet: and this is before it is ingrossed; yea, and sometime after. But the agreement of these committees is no prejudice to the House. For at the last question they will either accept it or dash it as it shall seem good, notwithstanding that whatsoever the committees have done." This description is supplemented by Hooker's report:—"When any bill is committed, the committees have not authority to conclude, but only to order, reform, examine, and amend the thing committed unto them; and of their doings they must give report to the House again, by whom the bill is to be considered."[2] In 1571 the journal for the first time records the reference of a bill to a real committee.[3] But the quotations just given bear internal evidence of dealing with an institution of old parliamentary standing. Indeed, we find in D'Ewes's reports that committees were an indispensable requisite of parliamentary work and were applied to a variety of ends. D'Ewes describes the reference of a bill to a committee, and the composition of this body as follows (he is speaking of a bill which is before the House for second reading):—"The Clerk of the House having read the title, and the bill aforesaid, standing, kissing his hand, delivered the same with a breviate (containing the substance of the bill) annexed unto it, unto the Speaker; who thereupon, standing up uncovered, and reading both the title and the breviate said, 'This is the second reading'; and then, having paused awhile and (as it is likely) none speaking against the bill, he put the question for the committing thereof as followeth." Then comes a description of putting the question, which was carried. "And thereupon every one of the House that listed, did name such other members of the same, to be of the committee, as they thought fit; and the Clerk either did, or ought to have written down as many of them as he conveniently could; and when a convenient number of the committees named were set down by the Clerk, then did the Speaker move the House to name the time and place when and where they should meet, which the Clerk did also doubtless then take a note of, and did also

[1] It is important to attend to the double sense in which the word "committee" is used in old parliamentary language. In early days it is not the body as a whole but each single member that is meant by the term; the body is described as "the committees to whom the bill is committed." The formation of the word is the same as that of many other English words which denote the recipient in a bilateral relation of obligation, such as trustee, lessee, nominee, appointee. The body is usually referred to in the old authorities as "the committees." But it was not long before it became usual to describe the totality of those to whom a bill was referred as a "committee," in an abstract sense. In both cases the English word emphasises the idea of delegation and not that of representation which the German word *Ausschuss* expresses.

[2] *Mountmorres*, vol. i., pp. 147, 148.

[3] *House of Commons Journals*, vol. i., p. 83. Under date 16th of May 1572 we find "the bill against fraudulent conveyances and secret estates of lands. The second reading; and committed unto Sir Henry Gates, Sir Nicholas Arnolde, Mr. Recorder, Mr. Monson, Mr. Fenner, Mr. Edward Stanhope, Mr. Snagge; to meet in Lyncoln's Inn Hall this afternoon at two of the clock; and to return the bill tomorrow." (*Ibid.*, p. 95.)

(silence being made in the House) read out of that book or paper (in which he entred them) the committees' names, with the time and place of their meeting."[1]

We learn likewise from D'Ewes of a remarkable rule applied to the composition of committees in his time. He reports a debate held (1601) in Queen Elizabeth's last parliament in which the principle was laid down that it was against the rules of the House to appoint any man who had spoken against the bill as a whole to be a member of a committee on the bill; but that it was not improper for one who had been on the committee to vote against the bill afterwards. For, as one of the members said, "By committing of a bill, the House allowed of the body thereof, though they disallowed of some imperfections in the same, and therefore committed it to some chosen men of trust to reform or amend anything therein which they found imperfect. And it is to be presumed that he that will give his No to the committing of a bill, will be wholly against the bill. And therefore, the House allowing of this bill to be committed, are (in my opinion) to disallow any that will be against the body of the bill for being committees."[2]

It may be clearly seen from these words and the order of the House which followed, in what way a committee was regarded at the time, namely, as an investigating technical auxiliary to the House, not as an element in arriving at a decision. Besides, we find committees appointed for all possible kinds of bills, and for the most diverse purposes; committees to draw up reasons for declining a conference with the Lords upon an extraordinary subsidy for war purposes, to discuss amendments made by the Lords, to decide disputed elections, to discuss bills for keeping corn within the realm, for the erecting of houses of correction, and numerous other subjects.[3] In short, committees in Queen Elizabeth's parliaments were looked upon as indispensable tools in all branches of legislation, with jurisdiction to make enquiries and obtain information.[4] These were all proper committees, select committees. Their entire dependence on the House was clearly brought out in one of the debates, in which a committee was described as being "an artificial body framed out of us who are the general body; and therefore that which is spoken at the committees . . . is gone when the body which is the commitment is dissolved; and then

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[1] *D'Ewes*, p. 44.

[2] *Ibid.*, p. 634.

[3] *Ibid.*, pp. 486, 559, 569, 593, &c., &c.

[4] On searching through D'Ewes's Journals we find that at that time the only bills which were exempt from commitment were those sent down from the Lords. D'Ewes states the rule as follows:—"When a bill hath once passed the Upper House in which besides the Lords the greater part of the judges of the realm are commonly assistants, there shall need no consideration thereof either for addition or mutation; for either House doth ever, for the most part, show itself so careful to keep firm correspondency with the other, as that when a bill hath passed either of the said Houses and is sent to the other, it doth for the most part pass, and is neither dashed nor altered without very great cause upon mature deliberation and usually also not without conference desired, and had thereupon; that so, full satisfaction may be given to that House from which the bill so rejected or altered was sent."—*D'Ewes*, p. 186.

every particular committee is no more a part of the artificial body but of us, the general body."[1] At first committees met outside the House, in various state buildings (*e.g.*, in the Star Chamber, in Whitehall) or in the lawyers' quarters (the Temple or Lincoln's Inn). Before long, however, we find a special room set apart in the House, called the "committee chamber." Soon the procedure acquired all the marks which characterise committee work to this day, especially the distinction between debate in the House and in committee, as to speaking more than once to the same question. The quorum was at first half of the membership, later on eight was fixed. The last step in a committee's proceedings was its report. Not infrequently the committee proposed an entirely new bill, which then had to undergo first and second reading. The committees had power to appoint sub-committees. They generally met in the afternoon, so as not to clash with the sittings of the House.[2]

The size of the committees varied considerably, but we may distinguish between two principal classes: in the first we have committees with three, four, six, ten, up to fifteen members; in the second, committees of thirty or forty, with the addition of definite classes, *e.g.*, all the lawyers in the House (gentlemen of the long robe), all the members in the House who were of the Privy Council (these appear in nearly all cases of this kind), the members for London or for Yorkshire, or all the knights of the shires. Often geographical assignments were made—for instance, all members from north of the Trent, or from the Cinque Ports, &c. The large committees were only formed to discuss highly important affairs.

But after a short time we see another point of distinction between them and the smaller committees—namely, a sessional reference to such large committees of a definite class of bills or a definite department of the business of the House. For the first time in 1571 a committee was appointed "for the subsidy," also a committee "for matters of religion," and a third for "motions of griefs and petitions."[3] In addition, all election disputes were referred to a special committee with nine members. These committees contained the seed of what afterwards bore fruit in the three historic "grand" committees on religion, on grievances, and on elections.[4] As early as 1581 a committee was appointed for the whole

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[1] *D'Ewes*, p. 635.

[2] *House of Commons Journals*, vol. i., pp. 150, 153, 273, &c. On the 24th of March 1604 we find (p. 153): "Note, that committees being once named, and a place appointed for their meeting by the House, may, from time to time, until the report of the proceedings be made, adjourn and alter their place and time of meeting, and select such sub-committees from amongst themselves as they shall find cause, for any particular purpose or service, to be assigned by themselves, or the House, upon their report."

[3] *House of Commons Journals*, vol. i., p. 83; *D'Ewes*, pp. 156–159. Singularly enough D'Ewes (p. 179) reports the appointment, during this session, of a special committee to arrange the order of sequence of bills to be considered. A similar committee to regulate the business of the House is recorded in 1625 ("Commons' Debates, 1625," edited by *S. R. Gardiner*, p. 11).

[4] See the elaborate dissertation on this subject in *Prof. Jameson's* "Origin of the Standing Committee System in the American Legislative Body." ("Political Science Quarterly (Columbia College)," 1894, p. 245.)

session to deal with all disputed election returns. In each of the parliaments of 1584, 1585, 1586, 1587 and 1588 a committee touching matters of privilege was appointed for the session. These committees were still comparatively small in numbers. In the parliament of 1589 we find a committee on privilege and one on "writs and returns," *i.e.*, election disputes. From 1592 onwards both of these undertakings are assigned to one and the same large committee, consisting of the privy councillors and thirty or more named members.[1]

Side by side with these committees, which, however they might differ in size, were all proper select committees, we find another form in which the House debated, sometimes called "general committee," sometimes "grand committee," and which was a committee with as many members as the House itself.[2] But for a long time this form of action remained in the background. In the parliaments of James I and Charles I, and even later, it was still the rule for bills to receive preliminary discussion in select committees, and then to be discussed in the House only upon the footing of the reports made.[3] The proceedings in the small committees might be attended by all members; but only those deputed by the House had voices in the committee.[4] The right of some committees to summon witnesses was expressly recognised; thus in 1640 we read: "Ordered, all committees of the whole House to have power to send for parties."[5] For the transaction of business the presence of one-half of the members nominated was required.[6] The report consisted of the bill and the amendments adopted by the committee. As a rule the House would only allow these last to be read and discussed as a whole.[7] Re-committal of particular clauses was not allowed;[8] the rule was that the

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[1] *D'Ewes*, p. 471; so, too, in 1597 and 1601 (*ibid.*, pp. 552, 622).

[2] The statement made in many popular accounts that a committee of the whole House was first employed for the discussion of the bill of attainder against the Earl of Strafford (1641) is a pure legend.

[3] See the description of the procedure in *Scobell's* "Memorials," pp. 46 *sqq.*: "If the question for committing the bill pass in the affirmative, then a committee is to be named; of which all those that took exceptions against any particulars in the bill (but not those who spake against the whole bill) are to be, and any members, that please, may name one apiece, but not more to be of that committee." Here, again, we find the above quoted rule, as to the exclusion of those who are opposed on principle to the bill, in operation. He continues: "Committees upon bills have not usually been less than eight, sometimes twenty, seldom more in former times, which engaged them to attend it and speed it."

[4] *Scobell*, p. 49: "Any member of the House may be present at any select committee, but is not to have any vote, unless he be named to be of the committee."

[5] *House of Commons Journals*, vol. ii., p. 8.

[6] *D'Ewes*, p. 436 (1589).

[7] *Scobell* reports (p. 52) that, on the 4th of June 1607, as an exceptional measure, when the amendments to the Bill of Union between England and Scotland were reported, the whole bill was by order of the House first read, and then the amendments by themselves.

[8] *Scobell*, p. 58.

work of discussing the details of a bill was carried on in the select committee. No doubt there was also in the early part of the seventeenth century a second mode of procedure with bills, namely, discussion by *committee of the whole House*. Thus we read in Scobell (p. 49), "Some bills of great concernment, and chiefly in bills to impose a tax, or raise money from the people, are committed to a committee of the whole House; to the end there may be opportunity for fuller debates, for that at a committee the members have liberty to speak as often as they shall see cause, to one question; and that such bills, being of general concernment, should be most solemnly proceeded in, and well weighed; and sometimes when a bill of that nature hath been conceived fit to be made, the House hath thought fit to resolve themselves into a committee, and either there or in the House to vote some heads for direction of such as shall be imployed to prepare the bill." This passage shows clearly the practice in the time of transition. A select committee was the traditional form for detailed consideration of bills, but the procedure of committee of the whole House was beginning to be regarded as the proper one for taxes and important transactions.[1]

We may ascribe this result to an important change which had taken place in the meanwhile — namely, the elaborate systematising of the standing committees which was completed in the early parliaments of the seventeenth century. To the above-mentioned committees on privileges and elections there were added, in 1621, a standing committee on trade and another on courts of justice, that is to say, on grievances against the administration of the law in such courts. With these the system of great standing committees, as it was to remain for two centuries, was brought to completion. They were called standing committees, and were distinguished from others which were appointed as occasion required and expired when the special business referred to them had been done.[2] These grand committees, or standing committees, served, as the matters within their jurisdiction indicate, for the discussion of the burning political questions of the time; they were the battle formation adopted by the nation, as represented by Parliament, for its defensive war against the attacks of the Crown on the Protestant religion and on the privileges of the House, and against its incursions into the spheres of the courts of law and of taxation. It was clearly desirable that all measures bearing upon these great questions should be discussed in the closest combination, so that the whole House might join in a plan of united action. The political origin of the

[1] A special note in one of the earlier journals shows that this form of proceeding was felt to be an innovation. It is reported that a certain committee met and sat till 11.30, "the Speaker from nine sitting in the Clerk's chair, the Clerk standing at his back, and Mr. Recorder, the moderator of the committee, sitting on a stool by him." (*House of Commons Journals*, vol. i., p. 414.)

[2] *Scobell* ("Memorials," p. 9) expressly states: "In Parliament there have usually been five standing committees appointed in the beginning of the Parliament and remaining during all the session; other committees were made occasionally and dissolved after the business committed unto them was reported. The standing committees are for privileges and elections, religion, grievances, courts of justice, trade."

standing committees produced, however, a further and most important effect. The standing committees, which, as we have seen, had been developed out of the old large committees of the Elizabethan parliaments, became without exception grand committees in the fullest sense, *i.e.*, committees of the whole House. In earlier days certain committees had been made very large, in order to allow a great number of members to contribute to the discussion of affairs in the committee stage; the same idea was operative in the disturbed times of James I and Charles I and led to the name and procedure of a committee being preserved, while every member of the House was given his share in the work.[1] There was the further consideration, which appears to have had some weight, that the traditional method of forming committees, by calling out names, gave no security against partisanship in their composition. Complaints were repeatedly made that members whose seats were far from the Speaker's chair could not make the names of their nominees heard, and were therefore unable to secure their appointment.[2] A remedy was sought by making it customary to allow committees to add to their number by co-optation, and a further step was taken when the proviso "all who come to have voices" began to be added to the orders by which such large select committees were appointed. In 1621, the meaning of this proviso was discussed at length, and an order was made "that when limited, all, that will come, shall have voice, that they, in that case, if they come, are committees, as well as those nominated."[3] The only exception to the enlargement of the standing committees was in the case of the Committee of Privileges, which always remained a select committee.[4] Private bill legislation, however, was not affected by the

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[1] The process can be plainly traced in the journals. In 1626 a committee for religion was appointed, with a declaration that all who came should have voices (*House of Commons Journals*, vol. i., p. 817). In 1625 this plan was opposed as new, and a select committee was indicated as the regular form. In 1628 all the standing committees (except that on privileges) were made into committees of the whole House, and also in the Short Parliament and the Long Parliament (1640). Four of the five standing committees were from that time regularly committees of the whole House, and at the same time they received power to send for persons and papers, *i.e.*, the whole power of the House for investigation.

[2] See the debates in the parliament of 1601, in *D'Ewes's* "Journals."

[3] *House of Commons Journals*, vol. i., p. 617.

[4] *Scobell*, "Memorials," p. 10: "But the committee for privileges and elections hath alway had the precedence of all other committees . . . . This committee is constituted of particular members named by the House." As to the committee on trade Scobell reports that it "hath sometimes been a select committee particularly named, and all such members, as should come to it, to have voices . . . . sometimes a grand committee of the whole House as 21 *Jacobi*" (p. 9). It is noteworthy that in the seventeenth century the power of appointing sub-committees was expressly given to grand committees. See the entries in the journals for 1640 (*House of Commons Journals*, vol. ii., pp. 17, 21); in the second case cited, however, it is noted that the House considered the power to be incident to them without special order.

tendency to allow the co-operation of members not expressly named; in 1624 it was provided "that, in private bills, there shall not be that general clause, for all, that will come, to have voice."[1] In 1628 the development was completed and the organisation of the grand standing committees, as retained till the nineteenth century, became fixed. In 1625 there was still some hesitation. On the advice of Sir Edward Coke, it was decided to abstain from appointing the three standing committees. In answer to many who wished to have them set up, Sir G. More affirmed the custom to be quite recent, and said that in Queen Elizabeth's time no such committees had been appointed except upon particular occasions.[2] The revolutionary Long Parliament which assumed all the powers of administration and government to enable it to carry on its war with Charles and to maintain the Commonwealth, did not find this form of committee practicable. The House was no longer a body united against the Crown, but was torn asunder by internal dissensions; committees of the whole House were therefore highly inconvenient to the ruling party, the Puritans, inasmuch as *they afforded their opponents equal rights with themselves in the detailed discussion in committee.* Besides, the mainly executive, governing activity of the revolutionary House of Commons called for the formation of small committees capable of administrative business. Hence in place of committees of the whole House, a series of special committees were appointed from the members of the majority, and these committees carried on the government of the country without check till Cromwell's assumption of personal rule. Cromwell's parliaments, it is instructive to observe, began at once to return to the former state of affairs. With the Restoration the old order of business was re-established, and from 1661 to 1832, at the beginning of each session of Parliament, the four above-mentioned standing committees were appointed as committees of the whole House for the duration of the session. A whole group of the heaviest and most important duties of the House were thus practically removed from the sphere of true committee action, and the name alone of committee was retained for what was simply another and more elastic form of deliberation by the House as a whole. Thus the habit of withdrawing all legislative work from select committees became more and more familiar; it became a matter of course to refer all bills to the grand committee, *i.e.*, the House in committee form, for detailed discussion after second reading. The same need was also felt in the case of the grant of public taxes and loans. There can be little doubt what gave the first impetus to this remarkable development, namely, the one great advantage of committee debate, the opportunity for thorough consideration of every detail given by each member being allowed to speak as often as he wished. But, in addition, some weight must be assigned to the influence of the idea that in this way every member of the House had an equal chance of sharing in the discussion and the amendment of legislative proposals.

From about 1700 onwards the form of committee of the whole House almost completely took the place of that of real committees in respect

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[1] *House of Commons Journals*, vol. i., p. 771.

[2] "Commons' Debates in 1625" (edited by *S. R. Gardiner*). Camden Society Publications, 1873, p. 12.

of bills and financial proposals.[1] From that date real committees have been only applied to investigation and preliminary work, and as organs in the direct legislative process have been smitten with atrophy. A further consequence of the wholesale adoption of the system of discussion in committee of the whole House was the practical destruction of the powerful machinery of permanent large expert committees appointed to consider definite classes of legislative proposals and administrative conditions; from this time they ceased to have any active functions and were only appointed as matter of form.

This leads to the consideration of an extremely important point in the procedure of the House of Commons, one which is of great importance in English constitutional law. We have already seen what took place at the moment when Parliament, during the Civil War, seized the whole power of the state, and particularly all its executive functions; with astonishing speed and great ability it made a change in its organisation, corresponding to the constitutional change that had taken place, splitting up into a number of small special committees to carry on the revolutionary government. The Restoration, which fully and unreservedly replaced the Crown in its old constitutional position, brought the forms of the House of Commons back to their old shape. Half a century later the Revolution and its political and constitutional results once more, but this time gradually and peacefully, had borne fruit in a second transfer to Parliament of the whole political sovereignty; and it would not have been surprising had the organisation of the House been changed to one like that of the Long Parliament. Two great facts in English constitutional history prevented this—in the first place the rise of the system of parliaentary party government, and in the next place the establishment of the Cabinet as the chief organ of government, and its absorption of all the functions which in theory appertain to the Crown. The same end was attained as before, namely, *the subordination of the whole conduct of the affairs of the state to the will of the House of Commons;* but no standing administrative committees such as those of the Long Parliament were formed: a different scheme was devised. Not only the whole power of government, but also the practical exercise of the royal prerogative, fell into the hands of a body of men who bore the title of servants of the Crown, but were in deed and truth a "joint committee" of the two Houses of Parliament. After the repeated explanations in earlier chapters of the system of parliamentary party government, we need not stop here to analyse this arrangement; it is enough to point out that these two facts, fully developed by the beginning of the nineteenth century, have a deep seated and intimate connection with the shaping of the arrangement of work in the House of Commons. If we recognise why England, unlike the United States and unlike other European countries, has refused to avail itself of a system of standing committees for legislative purposes, and has retained the singular form of committees of the whole House, we shall gain fresh and vivid light upon what is the pivot of the modern English constitution, namely, parliamentary cabinet government.

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[1] Before the procedure committee of 1854, Sir Erskine May said of the practice of referring public bills to committees of the whole House as a matter of course was "modern to this extent; it has prevailed since the Revolution." Report (1854), Minutes of Evidence, Q. 270.

We must, in conclusion, cast a glance upon the changes in the committee organisation of the House made by the reforms of the nineteenth century. It is characteristic that, in the various select committees appointed to prepare suggestions for reform in procedure, a wish to return to the old practice was repeatedly expressed, and proposals were made to refer the detailed discussion of legislation to select committees, at all events partially. Thus before the committee of 1854 Sir (then Mr.) Erskine May suggested the omission of the committee stage for certain bills, and further that some bills might be referred to select committees for discussion on the understanding that this should take the place of discussion in committee of the whole House, unless an express motion were made in the House for recommittal of the bill. Neither measure appeared of much importance, even on May's own showing, the first suggestion being applicable to perhaps twenty, and the second to seven or eight, bills in the course of a year.[1] The committee doubted the utility of the proposals and did not recommend their adoption by the House; they also declined to endorse May's other proposal for a rescission of the old standing orders which required that bills relating to religion or trade should originate in a committee of the whole House, instead of being introduced upon a simple motion in the House itself. May considered this provision antiquated and recommended its abolition; but he was unable to convince the committee.[2] Not till the 29th of February 1888 was the old rule actually done away with. Further, the House of Commons has decidedly set its face against suggestions for limiting or abolishing the form of committee of the whole House. The idea of depriving any member of his share in the detailed and elastic discussion in committee has always been, and is still, unwelcome.[3] Before the committee of 1861, Speaker Denison made a forcible appeal for a partial dispensation with committee discussion by the whole House. He urged that it would often be sufficient to deal with certain clauses or divisions of a bill in the whole House, on the lines laid down by a previous report from a select committee.[4] On this occasion the committee in their report recommended the acceptance of the proposals made by the Speaker. They said, "The precise nature of this proposal is worthy of close attention. If a motion be made that a bill after the

[1] Report (1854), Minutes of Evidence, Qq. 197, 262, 272 and 276. Mr. Shaw Lefevre expressed a similar view (Q. 457), but he suggested stronger select committees for the purpose.

[2] Sir Erskine May's remarks on this point are worth reproducing He said: "These preliminary committees were supposed to be additional safeguards in respect to bills of special importance; but it seems to me that bills of far greater importance are, by the present rules of the House, brought in without any such preliminary committee. Bills may be brought in for the suspension of the Habeas Corpus, for the restriction of the liberty of the subject or the liberty of the press; bills for disfranchisement; even the Act of Succession itself might be repealed, and the entire constitution of Church and State subjected to fundamental alterations without any preliminary committee; and yet, in these two particular cases of trade and religion, a preliminary committee is required." Report (1854), Minutes of Evidence, Q. 197.

[3] But see Supplementary Chapter.

[4] Report (1861), Minutes of Evidence, Q. 155.

second reading be referred to a select committee, the House on each occasion will have the opportunity of exercising its judgment, whether the principle and details of the measure are so much intermixed as to render the reference to a committee upstairs inexpedient. The controlling power of the House over each bill will in no degree be compromised. The decision to refer or not to refer will remain entirely in their own hands; and when the report comes down from the select committee the House will have an ample opportunity of revising the proceedings and the decisions of the select committee. If they be sanctioned, the delay and the unnecesssary step of a reference to a committee of the whole House will be avoided; if it be deemed necessary or wise to reconsider the amendments, on motion the bill will be recommitted, and an appeal will thus be given to the judgment of the whole House. Without recommitting the whole bill, there may be frequently great advantage in recommitting certain clauses only."[1] In spite of this expression of opinion by the committee, the House refused to sanction the innovation, even in the experimental form in which it was brought forward.

Turning to select committees, the chief changes have been in the method of their appointment and the diminution in their size. The composition of such committees, usually of twenty-one members, by election in the House itself was, early in the nineteenth century, felt to be an arrangement with little to recommend it, as it often led to long and dreary debates and divisions. In 1836 a decided improvement was brought about by reducing the normal membership to fifteen, and at the same time directing the regular publication of the names of members of committees; it was also ordered that the name of every member putting a question to a witness or expert should be prefixed thereto in the short-hand minutes. The advantages of this reform were stated by Sir Erskine May to the 1854 procedure committee; it increased the responsibility of members of the committees, made the evidence more intelligible and consistent, and, by reason of the increase in publicity given to the proceedings of a committee, brought a healthy public opinion to bear upon its work. He suggested a further diminution in number, to eleven, with a quorum of five, and proposed to hand over their composition to a special Committee of Selection, pointing out the success of a similar measure in private bill legislation.[2] Speaker Shaw Lefevre supported these views. The committee, however, did not fall in with the schemes of these two authorities. It expressed a fear "that there would be some risk of lessening the weight and authority which ought to attach to the report of committees."

With regard to the mode of selection of members of the committees the report of 1854 acknowledged the force of the objections to the practice then in use, but it expressed a doubt whether any other mode would be more free from objection. The difference between the principles on which members should be chosen for committees on public bills and for those on private bills was very great, and "while the latter may safely and beneficially be placed in the hands of a small committee of selection, without any appeal from their decision, your committee apprehend that the adoption of a similar practice with regard to ordinary public com-

[1] Report (1861), p. viii.

[2] Report (1854), Minutes of Evidence, Qq. 373–375.

mittees would fail to give satisfaction to the House or to the public." Strange to say, the remedy suggested by the report was a greater forbearance on the part of members in moving for the appointment of committees.

Before the committee of investigation in 1861, Speaker Denison spoke with somewhat uncertain voice as to the diminution in strength of select committees; he fully recognised that it worked well in the case of private bill legislation, but was not sure that the same considerations applied to committees on public bills. He acknowledged the force of the argument that the smaller the number of members on a committee the greater was the feeling of responsibility felt by each, and the better and quicker each worked.[1] He was opposed to the suggestion that committees on public bills should be chosen by the Committee of Selection. The committee itself did not make any recommendation on this head, and it therefore never came before the House. But before very long the House found itself compelled to adopt this method as the regular, though not exclusive, way of appointing select committees. By the end of the seventies the practice had been tacitly adopted without any specific rule having ever been laid down.[2]

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[1] Report (1861), Qq. 176–194 and 219–226. Sir George Grey drew attention to the great distinction between the judicial procedure in a private bill committee, and the action of a committee appointed to consider and report upon some question of a political character. It would be practically impossible in the latter case to constitute a non-partisan committee as was easily and properly done for private bills.

[2] See *May*, "Parliamentary Practice," p. 404; also 10th edition, p. 381, note 6.

PART VII

The Forms of Parliamentary Work

1. Motions[1]

ALL parliamentary activity is directed to the definite formulation of the united will of an assembly of many persons. The aim of a parliamentary body is to proceed, in a prescribed manner, to focus the will of a majority of its members, to which the will of the minority must give way, so as to give an answer to a definite question brought before it by one of the body, and formulated according to certain rules laid down in advance. It follows that *motion* and *resolution* are the two fundamental forms of parliamentary deliberation. Logically regarded, the whole activity of every parliamentary body is made up of motions and resolutions; and the same is true if we look at the actual historical development of any particular parliament. For the House of Commons this may be summed up in the following statement:—"A matter requiring the decision of the House is decided by the answer given by the House to a question put by the Speaker on a motion proposed by a member."[2] Looked at from the standpoint of form, a bill, a legislative proposal, may be analysed into a series of motions. Its component parts are so considered, each of its clauses being made the subject-matter of a motion and of a resolution or decision upon the same.

The House of Commons has, in the first place, a series of general rules which apply to all motions, including those incidental to the discussion of a bill. There are

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[1] *Manual*, pp. 96–103. *May*, "Parliamentary Practice," pp. 238–246. Cf. *Bentham*, Works, vol. ii., pp. 334 *sqq*.

[2] "A matter requiring the decision of the House, or of a committee, is decided by means of a question put from the Chair on a motion proposed by a member." (*Manual*, p. 96.)

also a group of special rules applicable to the discussion of a bill as a matter *sui generis* and as an entirety. The bill being the sole form in which Parliament exercises its supreme function of legislation, its treatment is not only the most important, but also the most complicated transaction in parliamentary procedure : it must therefore receive separate discussion. For our immediate purpose, that of taking a survey of the elementary forms of procedure, a bill is simply to be regarded as an aggregate, composed of a group of motions. To employ a simile, a motion is like a cell, and a bill like a body composed of cells : it is all-important to begin with a study of the simple cell.

As a general rule in the House of Commons every motion must be supported by some member other than its proposer ; in other words, must have a "seconder" : if a motion is not seconded it falls to the ground and is regarded as non-existent, though it may not be otherwise defective in point of form. There are various exceptions, however, to the rule. It does not apply to motions of a purely formal character, nor to motions set down as orders of the day, nor to motions in committee of the whole House ; and it is, by etiquette, waived with respect to motions from the "front benches." An important distinction between motions is that which divides those which require previous notice from those which may be moved without notice. Motions which lay before the House any question of substance require, as a rule, to be made known in advance : the notice may be given in writing,[1] or, under certain circumstances, orally. The rule as to notice is connected with the arrangement which provides a printed *agenda* paper for each sitting, delivered to every member of the House before its commencement : this programme is drawn up so as to show all the items of business for the

[1] Notice in writing has to be given at the table during a sitting of the House. For this purpose sittings of the House in committee are treated in the same way as other sittings. A member may also give oral notice of an intended motion, either before the commencement, or after the conclusion, of public business—the former is the more usual time ; in such a case, however, the exact terms of the motion, with the name of the mover and the date upon which it is to be brought forward, must be sent in again in writing. If a member desires to vary the wording of

day's sitting in the permanent order laid down by the rules. One of the first headings in the permanent order is the announcement of notices of motion for future sittings. The order of precedence for motions of which notice has been given and the length of the interval between giving notice and actual moving are settled by a special procedure, the rules of which will be more conveniently described in our discussion of the daily programme.

A motion of which notice has been given is subject to the further provision that only the member in whose name it stands is entitled to move it when its turn arrives. The only members in whose favour an exception, on obvious grounds, is made are those who are ministers of the Crown: a motion in the name of one minister may be made by one of his colleagues in his place. There are also two classes of motions which may be moved by one member on behalf of another who has given notice of them: one class is that of motions for granting leave of absence to members, the other is that of motions for returns by a Government department when no objection is made either by the department concerned, or by any member of the House (unopposed returns).

The rules for determining whether notice is needed or not cannot be stated in any precisely logical form. There are, in the first place, a certain number of cases in which express provisions of standing orders or long-established usage have made notice necessary: the list is as follows; namely, motions

1. For the introduction of a new clause upon the report stage of a bill;
2. For the nomination of members to serve upon a select committee;

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a motion the terms of which appear in the notice paper, he may do so by giving at the table an amended notice, the amended notice being given, at latest, during a sitting of the House preceding the day appointed for the motion. The proper officers of the House, under the supervision of the Speaker, are charged with the duty of correcting or withdrawing from the notice paper any irregular notice, or one which contains unbecoming expressions. This function has to be exercised with great tact, as it gives the Speaker a kind of censorship whereby he can suppress motions and questions the wording of which is out of order or unsuitable.

3. For constituting a select committee of more than fifteen members;
4. For adding members to a committee;
5. For circulating a petition with the notice paper;
6. For granting leave of absence to a member;
7. To discharge a member from attendance on a select committee when not moved pursuant to the report of a committee;
8. To amend the question for the House going into Committee of Supply;
9. To rescind a resolution of the House, or to expunge or alter the form of an entry in the "Votes and Proceedings";
10. To add to the number of days allotted to supply;
11. To present a bill without an order of the House;
12. For an instruction to a committee, or the enlargement of the scope of an instruction already given.[1]

In addition to these specific classes of motions, most substantial motions have to be prefaced by notice. There are, however, certain exceptions to this general rule which may now be considered.

1. A main class of exceptions springs from the proviso that no notice is required of a motion which is only an amendment, *i.e.*, a subsidiary motion proposing to change the form of the question which some member has brought before the House.[2] An exception to this exception is to be found under the eighth heading above.

2. Notice may be dispensed with by the general concurrence of the House. It is not to be supposed that this encourages any laxity in requiring notice in the case of

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[1] See *May*, "Parliamentary Practice," p. 246.

[2] Practice, however, has, during the last ten years or so, made the giving notice of all serious amendments, especially those to important legislative proposals, a matter of necessity. The two great bills of 1903—the Irish Land Bill and the London Education Bill—may serve as examples. The notice paper for the 7th and 8th of May 1903 contained on no less than fourteen folio pages (pp. 433–447) all the amendments proposed up to that date on the Irish Land Bill. Although the Education Bill consisted of but a few clauses, there were ten folio pages of amendments (pp. 455–464) in the notice paper for the 11th of May 1903.

substantial matters. There are only a few cases in which, on very special grounds, the House will give leave to introduce motions on the spur of the moment.

3. A motion "for the adjournment of the House, made for the purpose of discussing a definite matter of urgent public importance" (the only form of urgency motion which is permissible) is not subject to notice being given. Nor are

4. Motions raising questions of privilege, nor

5. Motions for appointing committees to prepare reasons for disagreeing with a Lords' amendment.

The reason, in both the two last cases, for dispensing with notice may, perhaps, be found in the fact that they arise out of the intervention of some external agent unconnected with the House.

6. Certain motions of a formal or uncontentious nature do not require notice: such are motions

(*a*) For the first reading of a bill from the House of Lords;

(*b*) For the consideration of Lords' amendments forthwith or on a future day;

(*c*) For the postponement, discharge, or revival of an order of the day;

(*d*) For the appointment of a committee of the whole House on a future day;

(*e*) By a minister for the immediate presentation of papers;

(*f*) For the issue of a new writ to fill a vacancy.

7. The motions connected with the normal deliberation on a bill are prescribed by rule or custom: they are the indispensable framework of parliamentary action, and consequently do not need prior notice.

8. A motion for the adjournment of the House or of the debate, or, in committee, a motion to report progress or that the chairman leave the chair, does not need prior notice. The object of such motions is generally to deal with some situation which has suddenly arisen, or in some other way to accommodate the proceedings to the course of the discussion: to require notice would be to deprive nearly all of them of their reason for existence, to defeat them in advance. They are the principal weapons of parliamentary

tactics, and are, for that very reason, subject to provisions of special application, limiting their use. We had better postpone our discussion of them until we reach the consideration of the daily programme.

One special limitation upon the right to introduce a motion deserves particular attention. There are certain exalted personages and officials whose conduct is not allowed to be made the subject of political discussion in the House except in a prescribed way. To prevent motions calling in question the conduct of such persons being sprung upon the House, custom has long laid down an express prohibition of any such discussion except upon a motion of which written notice has been given according to the rules. The persons whose conduct is thus protected from sudden challenge are the Sovereign, the heir to the throne, the Viceroy of India, the Lord Lieutenant of Ireland, the Speaker, the Chairman of Committees, members of either House of Parliament and the Judges of the Superior Courts.

The natural way of disposing of a motion is putting it to the House as a question, and the ascertaining of the answer of the House by its vote. Question and vote together make the decision of the House. Without a vote there is no regular decision of a question. *Moreover, it is important to observe, there can be no vote and no decision without a precisely framed question.* A question is an indispensable preliminary to a decision, and therefore to every act of volition by the House. Before, however, we go on to consider the manner of putting the question there are certain irregular methods of disposing of a motion to which reference must be made.

There are two questions to answer: (1) Can a motion once moved be withdrawn, and does the same rule apply to motions of which previous notice has been given as to others? (2) Is the Speaker bound to put every motion to the vote?

The answers to the two questions are characteristic of the House of Commons.

A motion *cannot* be simply withdrawn by its proposer. The English rule is that a duly proposed motion when once before the House is from that moment no longer the

property of the mover, but is in the possession of the House. For the withdrawal of a motion the consent of the House is required. Nay more, the House must be unanimous on the point.[1]

The possibility of the Speaker's refusing to allow a motion to be voted upon can only arise in the case of motions which are out of order either in their subject matter or in their form. Such are motions which contain unbecoming expressions, infringe the rules of the House or contain reflections upon a vote of the House. Irregularities of this kind may, under the Speaker's authority, be corrected by the clerks at the table; or, by his direction, irregular motions may be withheld from publication on the notice paper.

2. Putting the Question

When a motion is duly proposed and comes up for consideration, it is debated; at the end of the debate the regular mode of disposing of it is by means of a question stated to the House by the Speaker in a form based upon the wording of the motion: by the answer to this question the House gives its decision. Let us, in the first place, ignore any complications introduced during the course of the debate, and take the simplest case of a motion which undergoes no change. There are two stages in laying a question before the House. First of all it is "proposed" by the Speaker; thereupon follow the debate, if any, the motions for amendment, if any, and any debates upon them. The end of a debate comes when no more members rise to speak, or when a closure motion is proposed and carried.[2] It is not till all these stages have been gone through that the second part of the Speaker's task arrives, his final laying of the question before the House, "putting

[1] *May*, "Parliamentary Practice," p. 280. The Speaker asks: "Is it your pleasure that the motion be withdrawn?" If no one dissents the withdrawal is allowed. A motion which has been withdrawn may be afterwards renewed. For this reason permission to withdraw is often refused.

[2] See *infra*, Part ix., as to the closure.

the question." The form in which the decision of the House is taken is invariable. The Speaker rises from the chair and says, "The question is that . . ." then come the exact words of the motion. The House may make its decision known in one of two ways, by voice or by division. These are the only two forms, handed down from immemorial antiquity, in which a vote can be taken.

The first named is the primary. Upon the request of the Speaker those who are desirous that the motion shall be accepted call out "Aye," and then those who are opposed to it call "No." When the two parties have thus expressed their wishes by their voices the Speaker, judging from the sound, declares whether in his opinion the ayes or noes are the stronger, saying "I think the ayes (or noes) have it." If his opinion is not challenged, the question is considered to have been answered, and is said to be "resolved in the affirmative" or "in the negative" as the case may be.

If, however, the party against whom the Speaker has given his opinion challenge its correctness, the second method of taking a vote comes into play: after an interval, to allow members not already in the House to come in, the question is put for a second time, and a division takes place. The regulations and customs governing this method of ascertaining on which side the majority lies will be best described after the form of amendments has been discussed.

The result of ascertaining the will of the House, collected in this way, may be an expression of either command or wish, an *order* or a *resolution*. There is no third form of parliamentary action. The essential difference between the two is that resolutions are directed to the outer world, and orders to the internal affairs of the House.

The House can only give orders within its jurisdiction, to its members and officers, to its committees and to itself: it may direct itself to take up certain questions or to abstain from considering them; further, it can give directions to itself as to the conduct of its business, and as to its procedure.[1]

[1] The House can also give orders to its executive officers, above all to the Serjeant-at-arms; by so doing it can indirectly reach into the world outside. But this anomalous infringement of the principle that

These directions may be general and permanent, or they may be special and temporary in their character. The description (*orders* of the day) given to the items of the daily programme, and the name (standing and sessional *orders*) given to the express rules made by the House for the conduct of its business, both indicate clearly the consciousness of the House of this power of giving commands as to its own work. The decisions of the House, however, have to dispose of all the tasks which are set before it. They may be decisions of a concrete legislative or financial kind, or purely political : again, they may be of an abstract nature expressing the opinion of the House on some matter of public concern, intended to inform the Crown or the Ministry of the views of the House as to what ought to be done : or, lastly, they may be decisions arrived at during the course of the deliberation upon some bill, and aimed at producing rules of law to be embodied in the expression of the legislative will. But rules of law can only be brought into existence when the decision of the House upon them takes the form of an act of parliament. It is a cardinal rule of constitutional law that neither decisions of the House of Commons alone, nor decisions of the House of Lords alone have legal efficacy upon the outer world.[1] Parliament can only produce an effect beyond its own walls in the shape of an act of parliament. It is only by joining in the production of a formal statute that the House of Commons can legislate, even in the administrative sphere to which earlier reference has been made. Acts of parliament are the only means by which Government departments and judges can legally be made to change their modes of action, the only instruments for imposing a legal duty of any kind

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the orders of the House only deal with internal matters is confined to the sphere in which the House is alone entitled to protect its rights directly against all the world—namely, the sphere of the privileges of the Commons and the special jurisdiction appertaining thereto. It may be said, also, that the House indirectly passes beyond its internal jurisdiction when the Speaker issues "warrants" under parliamentary or statutory authority.

[1] The *judicial* decisions and judgments of the House of Lords, when acting as the highest court of appeal, are, of course, upon a different footing.

whatever upon the subjects of the realm. The House of Commons has no power of taking administrative action beyond its own borders to carry out a decision at which it has arrived. Such an act would be no mere breach of the rules of the House, it would be an infringement of a fundamental principle of the British constitution.

This is one of the few and, to my mind, insufficiently appreciated arguments in favour of the proposition that the *principle of the separation of powers*, at all events to a certain extent, is to be found operating in the law of Parliament in England; both Houses are strictly forbidden to exercise any executive power. Executive action is theoretically and formally reserved for the courts of law and the various bodies deriving authority from the Privy Council. But if we are not to be led into serious error, we must not fail to observe that this principle of separation of powers is here only applied in a purely technical sense. As a matter of fact, Parliament, and ultimately the House of Commons, has a paramount power of guiding the executive, and that by two different methods; in the first place by means of the institution of parliamentary cabinet government, and in the second place by means of the unlimited legislative competence, which, both theoretically and practically, belongs to the British Parliament. The Government, *i.e.*, the superior and inferior officers of the Crown, are, under the existing constitution, all members of one or other of the two Houses of Parliament, and, both by the theory of the constitution and as a result of the practical sanctions which support that theory, are unable, except temporarily, to carry on the executive government after the majority of the House of Commons withdraws support from their policy and administration. It will be seen, therefore, that the House of Commons is able not merely to bring strong pressure to bear on the policy and administration of the Government, but it can at any moment simply make its will into the will of the Government. It may be urged that the influence of Parliament upon administration when exerted in this way is purely political; but the second means of influence is one which rests upon a firm juristic foundation. There is

no principle of the British constitution which prevents the House of Commons from throwing into the shape of a bill any scheme of external action which it may desire to see carried out.[1]

No doubt any such bill, before it became law, would require the concurrence of the House of Lords and the Crown, and though the consent of the Crown is no longer more than a ceremony, the House of Lords is still a real factor in legislation. However true it may be that, in a political sense, or even as regards the living constitution, the House of Commons is the ultimate legislative sovereign, if we go to the strict legal theory, the House of Commons is only equal, not superior, to the other components of the legislature. Without taking into account the now obsolete veto of the Crown, the resistance of the House of Lords, so frequently offered even in our own days, produces at all events a dilatory effect upon the proposals of the other House; it is, therefore, quite correct to assert that in the sharp division between orders and resolutions we have a constitutional and political fact of great practical importance. It is an expression of the principle that the House of Commons, as a rule, can only bring its unrestricted powers into play in the form of an act of parliament.

A motion and the question founded upon it can, however, be disposed of in other ways than by a decision. There are four irregular modes in which this can be done. They have one common result, that of preventing the question proposed by the motion being actually presented for

[1] This is, perhaps, the most sharply defined juristic difference between the parliamentary government of Great Britain and the constitutions of Continental states. There is no department of government in which under the British constitution, the will of the state can only be expressed by means of royal ordinance or ministerial edict: the doer of any act of government is always responsible, directly or indirectly, to Parliament, especially to the House of Commons. The sole—theoretical—exception is the sphere of the royal prerogative. From a strictly legal point of view the previous consent of the Crown is needed to enable Parliament to affect the prerogative. But, practically speaking, there is no risk, even here, of any conflict: it is the very essence of the system of parliamentary government that the royal prerogative is only exercised upon the advice of the responsible Government.

decision: it is formally evaded, by being replaced by another question, so that the first question and the motion which it incorporates are superseded.

1. A motion may be superseded by a *motion for adjournment.* This must be moved as a distinct question in the form "That this House do now adjourn." We shall have later to discuss how far such a motion is admissible at any stage of a sitting. If, however, a motion for adjournment is duly proposed and carried, the principle of strict adherence to the day's programme, peculiar to the House of Commons, and one of the chief features of its present procedure, produces the result that the motion previously under discussion is put on one side without a vote. Before a motion, during the debate on which a motion for adjournment has been carried, can be reintroduced, notice has to be repeated and the whole procedure has to be started afresh. Practically speaking there is but little chance of bringing the motion on again.

A "count out" for want of a quorum when the House is engaged upon the discussion of a motion has exactly the same effect. The motion and question are got rid of for the sitting and can only be reintroduced by beginning again.

A motion to *adjourn the debate,* if carried, has no such effect: it simply defers the question to a future day to be fixed by the House.

2. The result upon a motion of another way of superseding it is very similar. It is permissible while a motion is before the House to move "That the orders of the day be now read." This motion was at one time common, but is now seldom made use of. The reason for its infrequency is to be found in the application of the rule of adherence to the day's programme.[1]

3. A motion which has been duly brought before the House may be superseded by an amendment. By virtue of the regulations as to amendments, to be described shortly, it is possible to propose the omission of any word or words

[1] In the French Chamber, on the other hand, this form of motion has acquired great importance both in regulating the course of business and in arriving at political decisions.

in the question, or even to move that the whole of such words after the word *that* be omitted, with a view to inserting others in their place, possibly of a tenor exactly opposite to those proposed to be left out. If such an amendment be carried, the original motion disappears, and the question to be decided is changed.

4. The fourth method is that of carrying what is called the "previous question." This method of procedure is both simple and ingenious. The traditional rules of the House allow the interposition, before the putting of the question on a substantive motion, of a formal preliminary motion, viz., "that that question be not now put."[1] This is the "previous question" which may be placed like a barrier in the way of the determination of the question on the original motion. If it is carried the effect upon the original motion is the same as if a motion had been carried for the adjournment of the House. There is nothing in the rules to prevent the motion being brought forward again, after a fresh notice, at a later sitting. The object, therefore, of moving the previous question is to provide a means by which the House can avoid a direct decision on a subject submitted to it.

If, however, the previous question is not carried, the motion has a further effect. The original question must be put at once, and no further debate or motion for amendment is permissible. The previous question is therefore, it will be seen, a double-edged weapon of opposition. For this reason there are further limitations on its applicability. It may not be moved on a motion relating to the transaction of public business or the meeting of the House, or in any committee or on any amendment.[2]

To conclude, except in the case of one of the irregular methods of disposing of a motion, as just enumerated, the question to be put must correspond exactly with the motion

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[1] The form of the previous question in the House of Commons is now negative; in other parliaments, *e.g.*, in the American House of Representatives, it is positive.

[2] The previous question was, till 1882, the only approach in the House of Commons to any kind of closure; it was then a venerable institution of the House. See May's evidence before the select committee of 1871, Minutes of Evidence, Q. 54; also *Manual*, pp. 69, 107, 108.

brought forward, and must be put to the vote. The only possible hindrances in the way are those of the provisions in the rules for the interruption of business at certain specified hours. There are, of course, the customary minor interruptions to the debate on a motion common to all proceedings in the House: these are chiefly caused by communications from the House of Lords or from the Crown.

3. Amendments[1]

Another of the chief forms of parliamentary proceeding, which, at bottom, is no more than a variety of motion in the widest sense of the term, is *amendment*. An amendment is a subsidiary motion, *i.e.*, a motion for fundamental or partial change in, curtailment of or addition to, a motion already before the House. There are a number of important regulations as to the manner of using this form of parliamentary action. In the first place, it is clear from the subsidiary nature of amendments that, theoretically speaking, they do not require previous notice. But there are important exceptions to this rule. In the following cases notice of an amendment is necessary:—

1. When the amendment takes the form of proposing new clauses on the report of a bill.[2]
2. When the amendment concerns the nomination of members for service on select committees.[3]
3. When the amendment is one to a proposed instruction to a committee.[4]
4. When it is proposed to move an amendment of a substantive character, political or other, to the formal motion for going into committee of supply.[5]

The reason for the last exception is easily seen. The principal motion is a recurring formality prescribed by the

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[1] *May*, "Parliamentary Practice," pp. 289–299; *Manual*, pp. 104–107; Standing Orders Nos. 39, 41 and 42.

[2] *May*, *ibid.*, p. 246.

[3] *May*, *ibid.*, pp. 246, 405.

[4] *May*, *ibid.*, pp. 482, 483.

May, *ibid.*, pp. 246, 609.

rules, and the amendment is only technically subsidiary to it, being really a main question itself : it is therefore dealt with as if it were the main subject for discussion. It is noteworthy that an amendment, unlike an original motion, even though it may have been the subject of written notice, may be moved by a member other than its first proposer.

In point of time an amendment is strictly dependent on the main question. It cannot be moved before the Speaker has proposed the main question. The order of succession in which amendments, if there are more than one, to a motion are to be brought forward is determined entirely by the order in which those who wish to speak are called upon by the Speaker. A member who is speaking may always conclude by making any motion which is in order at the moment. No precedence is accorded to amendments of which notice has had to be given, and which are printed in the notice paper, except that the Speaker may be expected to watch for the rising of the members in whose names they stand. The order of speakers determines, therefore, the succession of the different stages in the discussion of the subject matter, as indicated by the different amendments.

The most important rule as to amendments is that they must be relevant to the question upon which they are moved. It follows from the nature of an amendment, as a motion subsidiary to the main question, that its contents ought to have some bearing upon the subject introduced by the principal motion : further, every amendment must be drawn up so as to leave the question, if altered in accordance therewith, in an intelligible form.

The moving of amendments is restricted by the rule that prohibits any proposal inconsistent with a decision arrived at in the debate upon the subject before the House. Thus no proposal to alter any words in a motion which have already been agreed to is permissible. It is also inadmissible to move any amendments to a formal motion other than such as have been recognised by the tradition of the House. For instance, a motion that a bill "be now read a second time" can only be met by certain recognised amendments, the most usual of which is to substitute for

"now" the words "this day six months"; a motion that the House or the debate be adjourned cannot be amended; a motion that the House at its rising do adjourn to a future day can only be amended by a proposal to adjourn to some other time.[1] It is also forbidden to introduce by way of amendment a motion which by rule has to be brought forward as a substantive motion after notice.[2] Lastly, no amendment may be moved which anticipates a motion or amendment of which notice has been given or matters contained in an order of the day.

By English parliamentary law, therefore, an amendment is, even in its wording, strictly dependent upon the letter of the main question.[3] No amendment can be proposed except a proposal to make additions to, omissions from, or changes in the words of the principal question. Three cases are possible :—

1. Amendment by the omission of words.
2. Amendment by leaving out certain words in order to insert or add others, giving a new meaning to the question.
3. Amendment by adding or inserting words, leaving the original text otherwise unchanged.

Amendments are disposed of by means of question and vote, just like substantive motions. Of course the subsidiary question has to be decided first. Whether this is carried or not, the main question must always be put. If the amendment is carried the main question submitted to the House

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[1] See *May*, "Parliamentary Practice," p. 294. This is an instance of the application of a general principle that a recognised formula for the advancing of a piece of parliamentary business by one of the stages through which it has to pass can only be met by an acknowledged formula of amendment. The provisions thus established form a striking group in which the characteristic parliamentary mark of "fair play" is plainly to be seen.

[2] Especially the motions above enumerated as to the conduct of the Sovereign, the Speaker, the Chairman of Committees, &c.

[3] The whole technique of amendments with its refinements, that strike a Continental observer so strangely, has been copied by all deliberative assemblies in the country; it is as strictly observed in town, county and district councils as in the House of Commons. See *Palgrave*, "Chairman's Handbook."

is the original question as modified by the amendment which has been passed. If the amendment is lost, it quits the stage, and the main question in its original form is once more proposed.

There are definite rules as to the method of putting the question in all three cases: they are all based on the idea that there is a presumption in favour of retaining the principal question.

In case No. 1 (simple omission of words) the subsidiary question is, "that the words proposed to be left out stand part of the question."

In case No. 2 putting the question is more complicated, as two subsidiary questions may be required. The first thing to be done is to decide, as in case No. 1, whether the words proposed to be left out shall be retained or not. If this passes in the negative, a second question is put "that the words proposed to be inserted be there inserted." It follows that, if this is affirmed, a third question becomes necessary, namely, whether the principal motion as amended is to be accepted or not. If the first subsidiary question is answered in the affirmative one question is saved.

In the third case there are only two divisions: the first as to the addition or insertion of the proposed words, and the second upon the main question either in the original form or as amended.

Of course it often happens that several amendments are moved to the same motion. In addition to the formal order given by the succession of speakers, there is a further principle, dependent upon the subject matter, which governs the order of the discussion of such amendments. The rule is that they must be taken in the order in which the words of the original motion affected by them appear in that motion. If any words in the text of a motion have been amended it is not possible to change any part of such text as precedes them. If therefore a motion to amend any part of a motion has been proposed and it is desired to alter an earlier phrase, the only way of bringing about what is wanted is to obtain (with the consent of the House), the withdrawal of the amendment under discussion: this can, of course, only be done if the mover consents.

If a motion is amended, the altered motion has to be dealt with as a principal question, and disposed of by a question. Thence arises the possibility of a sub-amendment, a subsidiary motion in the second degree, which can be interposed between the proposal of the question on the first amendment and the final putting of this question. An amendment to an amendment, then, is in order.[1] The procedure is precisely analogous to the procedure on amendments to motions. All confusion is avoided by strict adherence to the order of succession: first, the proposal to amend the amendment is taken, then the amendment itself as amended, and finally, the original question, as altered by the amendment in its final form, is put and decided by the vote.

There are two ways, other than the regular mode of question and vote, by which an amendment may be disposed of:—

1. It may be withdrawn. The same rules are applicable as in the case of a motion which it is desired to withdraw.

2. The Speaker may rule it to be out of order. The reason for such a ruling may be its irrelevance to the principal motion, or that its adoption would cause the question to become meaningless, or again, that it infringes some one of the rules above laid down as to anticipating motions on the paper, &c.

These rules in themselves give the Speaker, by the help of the weapon of interpretation, no inconsiderable power of removing from the course of business amendments of a merely dilatory kind. But the general authority of the Speaker to maintain order and to conduct the business of Parliament strengthens him still further. Amendments which by their substance or wording are unbecoming, and such as are mere negatives are also forbidden by the Speaker.

A study of the debates of the last ten years in the House of Commons will furnish many examples of the plenary power of the Speaker which he exercises unflinchingly to

[1] *May*, "Parliamentary Practice," p. 296.

prevent the abuse of the right of members to move amendments at all times.

There are special and more far-reaching rules, as to the mode of applying amendments to the discussion of bills, but we must return to these in Part x., where they will be more fully described.

4. Divisions[1]

In parliamentary bodies the formation of a state will is accomplished by means of the acceptance or rejection of the motions submitted to them. The combination of the individual volitions of the units who compose the assembly into a joint will, which gives a decision, is effected, in accordance with the principle that the will of the majority is to be deemed the will of the whole, by taking a vote. The practice in the popular governing assemblies of Greece and Rome was to obtain the affirmation or negation of a definite, formulated question ; the House of Commons has adopted the same plan, and all Continental parliaments have followed its example in this respect. An argumentative vote is not allowed in the House of Commons, but, curiously enough, in the House of Lords any peer is at liberty to make a written statement of his dissent to any measure passed by the House and of his reasons for objecting ; such protest, together with the names of all who concur in it, is entered at full length in the minutes of the day's sitting. A vote in the House of Commons must be given personally. The same rule applies now in the House of Lords, but down to 1868 absent peers were entitled by ancient usage to vote by proxy on certain questions.

The steps leading up to the taking of a division have already been described. To understand what happens during the division itself it is necessary to recall for a moment the arrangement of the House of Commons and its meeting chamber. The rectangular chamber is bordered by the "division lobbies," which communicate by doors one with another, and with the remoter rooms used for the various

[1] The rules as to the method of taking divisions have recently been considerably altered : see Supplementary Chapter.

political parties and for other purposes connected with the House. The chamber has six doors, one at each end and two on each of its sides, all of which lead into these lobbies.

As soon as the Speaker's opinion as to the result of the vote by voices has been stated and has been challenged by at least two members, the Speaker takes the first step towards a division by directing all strangers to withdraw. This direction only applies to those who are in the strangers' seats behind the bar : those who are in the galleries are allowed to remain in their places.

An important rule now comes into operation. By the rules of the House no member is entitled to take part in a division who was not actually present in the House when the question was put, the space between the double doors at the ends being for this purpose reckoned as part of the House. Properly speaking, only such members as were in the House at the first attempt to take the voices ought to be allowed to vote in the division. But a short period of grace is given during which the bells in the various lobbies and rooms ring continuously, and members have a chance of reaching the House in time to give their votes.

Such members as wish to abstain from voting must, while the bells are ringing, withdraw both from the House and the division lobbies. The interval is two minutes long and is measured by a sand-glass, which is turned by one of the clerks at the table at the moment when the Speaker directs strangers to withdraw. The members who come into the House during these two minutes are both entitled and bound to vote. When the sand has run out the Serjeant-at-arms, having previously cleared the lobbies, on a signal from the Speaker closes and locks all the doors leading into the House. The question is then put a second time and the voices taken as before. It is still possible to avoid a division, though it is not often that this happens. As a rule the party against whom the Speaker declares his opinion again challenge and the division takes its course. During the taking of the voices the second time no member is entitled to speak, and there is no possibility of reopening

the debate. The Speaker gives the direction "the Ayes to the right, the Noes to the left," and when Government and Opposition are face to face calls upon the two Whips on either side to act as tellers; if the division is not on party lines he names other members for the office. If either side can find no teller or only one no division takes place. Four tellers are absolutely necessary for a valid division.

Every member who is within the doors when they are closed is bound, when the two pairs of tellers have stationed themselves at the doors leading from the lobbies, to leave the House for one lobby or the other, and so declare himself an aye or a no. Refusal to vote, *i.e.*, remaining in the House, is forbidden.[1] Declining to leave the House has been punished as a serious breach of order. When the House has been emptied as described the members return to it through the end doors, which have meantime been opened.

The two pairs of tellers stand at the doors, one from each party officiating at each door. They count the members as they return into the House from the two lobbies, and thus discover on which side the majority is to be found. But this is not the whole of the enumeration. Each of the two lobbies into which the different parties stream serves as a voting room.

In each lobby there is a table at which two of the clerks sit, each with a list of members, one having a list of those whose names begin with one of the letters from A to M, and the other a list going from N to Z. One by one the members pass by these tables on the side determined by the initial letter of their surnames, and give their names to the clerks, who mark them upon their lists.

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[1] Under the new system of taking divisions it is now (1907) no longer necessary for all members present in the House to record their votes (see Supplementary Chapter). Remaining in the House during a division used to be a serious parliamentary offence; every member within the locked doors was bound to vote. A case of disobedience to this rule occurred on the 5th of March 1901. Several Irish members refused to go into the lobbies as a protest against the neglect of Irish interests in the discussion of the estimates. They were all suspended and forced to leave the House. (*Parliamentary Debates* (90), 691 *sqq.*)

Thus the votes are not only counted by the tellers at the doors; they are recorded, and it can be ascertained how each member has voted in every division. The division lists for each sitting are printed at once, and included in the minutes which appear on the following day: they afford material for control of members by their constituents, a control often very sharply enforced. The whole process, though it seems complicated, is gone through very quickly: a normal division lasts on an average some ten or fifteen minutes; only in exceptional cases does it take much longer.[1]

The result of the division is made known by the tellers according to a strict routine. They give the numbers to the Clerk at the table, who writes them down on a slip of paper, and hands them to the principal teller of the victorious side. This symbolic act at once informs the House of the result of the vote, and on occasions when great issues are decided, the tension of the House expresses itself immediately by loud cheers and counter-cheers. Then the four tellers range themselves in line before the table, the tellers for the majority on the Speaker's left, and the others on his right; they bow to the Speaker and the senior teller reads out in a loud voice, "Ayes to the right, so many; Noes to the left, so many." If the tellers cannot agree as to the numbers, or if the count appears otherwise doubtful, there must be a second division. If a member strays into a wrong lobby, and therefore gives a vote contrary to his intention, his vote is governed by the old seventeenth century rule, that what he has done is conclusive, and overrides the intention which he has wrongly expressed.[2]

The process of division is bound to take place if the Speaker's statement of opinion as to the result of taking the

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[1] The less the difference in strength between the two sides, the quicker does a division come to an end; the work of the tellers at the doors, and of the clerks who take the names in the lobbies, is then more evenly divided. When divisions are forced by small sections of the House, they last, of course, much longer; sometimes as much as half-an-hour. See the Report of the 1871 procedure committee, Minutes of Evidence, Qq. 238–245, and 302–306, evidence of Sir Erskine May and Speaker Denison.

[2] For a recent instance see *Parliamentary Debates* (121), 431.

voices is challenged. There is one exception under recent regulations. Till a short time ago, according to a practice which had lasted for centuries, the call of two members for a division was a sufficient challenge of the Speaker's statement, and required to be tested by a division. The misuse of this right in the obstruction period led to the adoption of Standing Order No. 30, which runs as follows :—

> Mr. Speaker or the Chairman may, after the lapse of two minutes as indicated by the sand-glass, if in his opinion the division is frivolously or vexatiously claimed, take the vote of the House, or committee, by calling upon the members who support, and who challenge his decision, successively to rise in their places, and he shall thereupon, as he thinks fit, either declare the determination of the House or committee, or name tellers for a division. And in case there is no division, the Speaker or Chairman shall declare to the House or committee the number of the minority who had challenged his decision, and their names shall be thereupon taken down in the House, and printed with the lists of divisions.

Special provision is made for the case of an equality in numbers, and this involves the right of the Speaker or Chairman to vote. Neither of these officers is, as a general rule, permitted to vote; but in case of an equality of votes the duty of giving a "casting vote" is thrown upon them. When this happens they are entitled to give their decision as they think fit, as freely as any other members; it is, however, an unwritten custom that the Speaker gives his vote, if possible, in such a way as to prevent the decision which it brings about being final, and so as to adjourn the ultimate disposal of the subject before the House to another time; it is also usual for the Speaker to state shortly the reasons which govern his vote.[1]

While discussing the form in which votes are taken it may be well to allude to a problem of constitutional importance, which receives an answer under the rules of the House; how far are members prevented by special regulations from voting freely when their personal interests will be

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[1] The case of an equality of votes is, in parliamentary language, spoken of as a "tie." As to the Speaker's function on such an event, see Speaker Denison's remarks in his Diary (pp. 95–99) upon his vote of the 19th of June 1861, whereby he postponed for several years the settlement of the Church rates question.

affected by the result of the division? In both Houses of Parliament there is an old rule which forbids a member to use his vote to further his own direct interests. The nature of such a direct interest was stated on the 17th of July 1811 by Speaker Abbot in the following terms :— "This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of His Majesty's subjects, or on a matter of state policy."[1] On the strength of his ruling a motion for disallowing the votes of certain bank directors upon the Gold Coin Bill was negatived.[2] As a rule the decision of any question as to the disallowance of a member's vote on the score of his being interested is left to the Speaker. The same rules apply to votes in committee as to votes in the House, and their chief application is to questions upon private bills, both in the House and in the select committees to which such bills are referred.[3] The propriety of a vote, on the ground of personal interest, cannot be questioned by anyone other than the member himself, except upon a substantive motion. As in all cases when the personal position of a member is brought before the House, it is a strict rule that the member concerned is to be heard in his place, before the question affecting him is proposed to the House, and that then he must withdraw and allow the subsequent proceedings to take place in his absence. It seems remarkable that a member who is disqualified by personal interest from voting is entitled to propose motions or amendments. There are other cases in which members might be expected to abstain from voting, not on grounds of pecuniary interest, but from motives of self-respect or respect to the House. There is no rule applicable to such

[1] *May*, "Parliamentary Practice," p. 373.

[2] The question how far the holding of a directorship in a public company is compatible with a place in the Ministry has often been raised of late years in the House of Commons, but no definite rule has been laid down.

[3] In the composition of committees on private bills the strictest attention is paid to the exclusion of all members who have any pecuniary or local interest which is affected. See the Report of the select committee upon public business of 1848.

circumstances, but a substantive motion to disallow a vote on such special grounds might be proposed, if a member did not see for himself the impropriety of voting.[1]

5. Petitions

The venerable institution of petition, the oldest of all parliamentary forms, the fertile seed of all the proceedings of the House of Commons, has but little life at the present day. It is, no doubt, the birthright of every British subject to address petitions to the House of Commons and the House of Lords as it was fifty years ago, and thousands of petitions are annually sent up to the House of Commons. Thanks, however, to the ample development of courts of justice and administrative bodies, the value of petition as a protection against denials of right has disappeared. So, too, petition as a means for calling attention to public grievances has lost much of its importance with the modern growth of the press, and the freedom of combination and assembly which now exists. The clearest testimony to the diminished importance of petitions is the change that took place during the nineteenth century in the rules affecting them. In the early decades it was the practice for petitions to be read by the member who presented them to the House, and they often gave occasion for protracted debates. In 1833 and still more in 1842 efforts were made to stop this waste of time, and thenceforward the period devoted to petitions has been continually shortened till now it is completely done away with.[2]

The rules of the present day provide as follows:—(1) as to the form and character of petitions; (2) as to their presentation and treatment.

1. Every petition must be couched in the form of a request and must state precisely what the petitioners desire.

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[1] The number of divisions in the course of the nineteenth century fluctuated very much. The annual average for the decennium 1845–1854 was 207, and for subsequent ten-year periods, 289, 186, 283, 325. In 1896 there were 419 divisions; subsequent years, down to 1903, gave 367, 310, 381, 298, 482, 648, and 263.

[2] See *supra*, vol. i., pp. 76, 77.

Petitions must not be printed or lithographed, and must be signed by at least one person on the sheet on which the petition is written. The name of the member who presents a petition must be personally signed by him upon the first page. Any forgery or fraud in the preparation of petitions, especially as regards the signatures, is considered a breach of privilege ; a petition so tainted is considered as null and void and is refused a hearing. The language of a petition must be respectful and must not refer to a debate in Parliament. Any disrespectful expressions referring to the Crown, to Parliament, to religion, to the courts of justice, or other constituted authorities, will make a petition unparliamentary and prevent its reception.

2. Petitions must be presented by a member of the House, unless they come from the Corporation of London or from the Corporation of Dublin, which have the special privilege of presenting petitions by their corporate officers. A member who is asked to present a petition is bound to peruse it for the purpose of seeing that it appears to be in conformity with the rules and orders of the House.

Petitions may be presented informally at any time, but there is only one period of a sitting at which formal presentation may be made, namely, immediately after the close of private business. In strictness a member is entitled, when he presents a petition, to state from what parties it comes, the number of signatures attached to it, the material allegations contained in it and the prayer.[1] No debate is allowed. The Speaker may allow petitions to be read by the Clerk at the table, but members are not entitled to read out the whole or even a large part of the petition.[2] There is only one exception. If a petition complains of some present personal grievance, an immediate remedy for which is urgently needed, the matter contained in such petition may be debated at once. This exception is to be construed strictly, and the question whether any particular case falls within it is one which has to be decided by the Speaker alone.[3] It is very

[1] Standing Order 76. [2] Standing Order 77.
[3] Standing Order 78.

rarely that he does so decide; even personal presentation of petitions has quite gone out of fashion.[1]

The informal method of presentation is the usual one. A bag is provided for the purpose of receiving petitions. It hangs behind the Speaker's chair, and at any time during the sitting a petition may be placed in it. Thence it is taken by the officials of the House straight to the Committee on Public Petitions; and this committee publishes, from time to time, classified lists of the petitions with a statement of their general objects. Such reports do not give rise to any further proceedings upon the subjects dealt with by the petitions.

6. Questions [2]

Though the House of Commons does not make use of the expression "interpellation" so familiar in Continental parliaments, the institution itself exists. Requests for information, "Questions" are regularly addressed by members of the House to the Government, and at times to the Speaker or to private members. A question addressed to the Speaker must have reference to a point of order, and one to a private member must relate to some item of business for which he is personally responsible. Such questions, however, are so unusual, that there is no need for us to concern ourselves with them. On the other hand, the ordinary questions put to the members of Government play a very important part in the proceedings of the House of Commons, and give the whole institution the great significance which it possesses.

"Asking questions" is a modern method, developed by recent parliamentary practice, of supervising the general policy and the administrative acts of the Ministry. The chief object which they serve is the explanation to the public of the meaning of political events, and it is permissible to frame questions so as to draw from the Government statements of their intentions or plans as to particular matters of public

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[1] *May*, "Parliamentary Practice," p. 534.

[2] *Manual*, pp. 55–61.

concern. Further, they are often arranged by the Government itself, so as to give them an opportunity of making announcements in a somewhat informal way. Questions, like motions, need previous notice, and must be made known at least a day before they are asked.

Information may be requested upon any subject of home or foreign policy, or of domestic, imperial or colonial administration. It has long ceased to be customary to give oral notice: the questions are drawn up in writing and handed to the Clerk; they are then printed in the notice paper for the day on which they are to be asked. When they are reached the text of the question is not read out. The Speaker calls in succession upon the members who have put down questions, and they rise and ask their questions by reference to the numbers prefixed to them on the notice paper. Thereupon the minister to whom they are addressed, or his deputy, rises and replies without any attempt at oratory.

This was the regular procedure in all cases till 1902: but it was still felt to take up too much time. In that year the present rule was adopted; it is now provided that any member who wishes to have an oral answer must mark his written notice with an asterisk: if he does not do so he is taken to intimate that he will be satisfied with a written answer. He receives it by the minister's reply being printed and published in the "Votes and Proceedings" on the day after the sitting at which the question is asked. There was, of course, a danger that only a few members would show sufficient restraint to dispense with an oral answer: the latest rules, therefore, provide (1) that the time for answering questions shall be strictly limited: questions are to begin at 2.15 and end at 2.55; and (2) that questions are only to be put at afternoon sittings.[1]

Questions not answered before the time for closing this part of the sitting do not receive an oral reply; they are answered in writing as described above, even though an oral reply had been asked for. The same fate befalls questions

[1] Standing Order 9: see Supplementary Chapter.

set down by members who fail to rise when called upon to ask their questions. The only exceptions are answers to questions not answered by reason of the absence of the ministers to whom they are addressed, and questions which have not appeared on the notice paper, but which are of an urgent character, and relate either to matters of public importance or to the arrangement of business.

A question must be precisely formulated and must be addressed to the minister who is officially connected with the matters to which it relates. Its object must be to obtain, not to give information : it may, therefore, contain no statement of fact which is not necessary to make it intelligible : nor may it contain any argument, inference, imputation or ironical expression. Further, we have another application of the rule that the conduct of certain persons can only be challenged on a substantive motion : no question reflecting upon the character or conduct of any such person may be put. Nor may a question seek information about the proceedings in a committee which has not yet made its report to the House. Irregular questions are dealt with by the Speaker in the same way as irregular motions and amendments.[1] He has also a general power to prevent members from asking an excessive number of supplementary questions. Lastly, he excludes all questions reflecting upon the Crown, or upon the influence of the Crown on any measure of Government.

A minister may decline to answer *without stating the reason for his refusal.* Insistence on an answer is out of order. It is, however, within limits, permissible to ask supplementary questions when certain points in an answer that has been given need clearing up. A question which has once been answered may not be exactly repeated. Finally —from a Continental standpoint the most important rule of all—*no debate upon an answer is allowed. There is now-*

[1] For instance, in 1887, many long-winded questions were put by Irish members for obstructive purposes; they overloaded the notice paper and took a long time to read. The Speaker directed them to be substantially abridged and spoke severely about unseemly questions. (*Hansard* (318), 42.)

adays, in the House of Commons, no possibility of a member, who is dissatisfied with the answer he receives, initiating an interpellation debate.[1] One of the principal sources of delay in business in many Continental parliaments is entirely absent from the House of Commons.[2]

7. Addresses to the Crown[3]

We have lastly to consider the special forms in which communications between the Crown and either the Commons separately or the two Houses in conjunction is carried on. This is done by means of an address which is an expression of the collective will of the House, based upon a motion and directed towards the Crown. It may be either spontaneous or by way of answer. We will deal with the latter kind first.

Communications from the Crown to Parliament may be made either directly and ceremoniously or indirectly and informally. Indirectly the Crown is in constant touch with both Houses of Parliament by the medium of the ministers of the parliamentary cabinet: in their double capacity of

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[1] No doubt, refusal to answer or the giving of an unsatisfactory answer at times leads to an "urgency motion," and often gives occasion for a debate in Committee of Supply.

[2] The French rules as to interpellations are of a totally different character. See *Esmein*, "Éléments de droit constitutionnel français et comparé," pp. 722–729.

The following table shows the extraordinary development of the practice of questions in the House of Commons:—

Year.	No. of Questions.	Year.	No. of Questions.
1847	129	1890	4,407
1848	222	1894	3,567
1850	212	1897	4,824
1860	699	1899	4,521
1870	1,203	1900	5,106
1880	1,546	1901	6,448
1885	3,354		

In 1902 there were, down to the 5th of May, when the Standing Order was altered, 2,917 questions; after the change there were 2,415 answered orally, and 1,836 in writing, a total for the session of 7,168. In 1903 there were 2,544 answered orally and 1,992 in writing—total, 4,536.

[3] *May*, "Parliamentary Practice," pp. 441–457.

Privy Councillors of the Crown and members of one or other of the two Houses, they are the natural channels of communication. Direct intercourse between the Crown and the House of Commons only takes place on the ceremonial state occasions of opening and closing Parliament when the speech from the throne is brought to its notice, and when the royal assent is given to bills. In these cases the sovereign may appear in person, and then he forms the central figure of a brilliant court assemblage in full mediæval pomp: or he may exercise his right by deputy, by a commission of members of the Privy Council with the Lord Chancellor at their head.

Besides these regular forms of communication, there are in the course of parliamentary business other special means by which the Crown may enter into relations with the two Houses.

1. The first form is that of a written message under the royal sign manual. Such a message is brought by a member of the House who is either a minister of the Crown or one of the royal household. Its subject may be a request by the Crown for provision for the royal family or for a gift to some distinguished public servant who has deserved well of his country, or again, it may be designed to call the attention of Parliament to important public events such as the calling out for service of the militia or the reserves. The royal messenger, always a member of the House, and in the nineteenth century invariably a minister, appears at the bar and informs the Speaker that he is the bearer of a royal message ; at the request of the Speaker he delivers it to him. The Speaker then reads it aloud, all the members remaining uncovered while he does so.

2. Another form is the communication of the royal "pleasure." This is used to invite the Commons to appear at the bar of the House of Lords, on the occasion of the election of a Speaker, when the King's Speech is to be read and at the opening and close of the session.

3. There is also what is known as a "recommendation from the Crown." This is important constitutionally and practically, as it is a necessary preliminary to the introduction

of bills or motions which involve public expenditure or a grant of money.[1]

4. The royal consent has to be given to motions for leave to bring in bills or amendments to bills which by their contents affect the royal prerogative.

5. Finally there is the noteworthy form by which the Crown "places its interests," in some particular matter, "at the disposal of Parliament."

In the three last-mentioned cases a minister of the Crown acts as messenger. Each of the different forms of communication is acknowledged in an appropriate way. The financial demands of the Crown are answered by grant or refusal, the intimation of royal consent to the introduction of a bill by taking the bill into consideration. It is only to formal communications—solemn messages from the Crown—that the House replies by means of an *address*.

Besides using addresses for answering the requests of the Crown, the House may adopt this form of communication when it desires *spontaneously* that some resolution on a particular subject may be brought before the Crown in a solemn manner, and not by the usual method; in so doing, it may act either singly or in concert with the Lords. It is, of course, impossible to enumerate all cases in which an address is appropriate. There is no definite sphere of applicability; the common element is a desire on the part of the House, as representing the nation, to record its views on some event in a peculiarly impressive manner. This may be desirable as to events both of domestic and of foreign concern. There seems to be only one direction in which any limitation has been laid down; no address may be presented in relation to any bill depending in either House. In earlier times an address was applied to the important political end of assuring the Ministry of the confidence of the House of Commons; at the present day this procedure has ceased to be of practical use.

[1] The ascription of the recommendation to "the Crown" is now, of course, a mere form, as the Sovereign has long ceased to intervene in financial matters. Its maintenance both gives an administrative advantage to the Ministry in dealing with the House of Commons and places on the Ministry direct responsibility for all proposals involving expenditure of public money.

The most important and most frequent occasion for the presentation of an address is the King's Speech.[1] This is always replied to by an address. Until recently it was customary to draw up the reply as a kind of echo to the speech itself. But nowadays the following simple form is customary :—

"Most gracious Sovereign, We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, beg leave to offer our humble thanks to your Majesty for the gracious speech which your Majesty has addressed to both Houses of Parliament."

In the event of a new parliament being returned with a majority holding political views differing from those of the Government, an amendment would be moved to the effect that the Government has no longer the confidence of the House of Commons, and the acceptance of this amendment would seal the fate of the Ministry in office.[2]

Other customary occasions for presenting an address are :—Cases of national or international mourning, the birth of an heir to the throne, betrothals in the royal family and the like ; in short, occurrences as to which the House desires to give adequate expression to the feelings of the nation.

Special mention should be made of one case of constitutional importance. An address to the Crown is the form in which Parliament may ask for the dismissal of a judge.

Addresses used to be presented in state by the Speaker, or, in the case of a joint address of both Houses, by the Lord Chancellor and the Speaker. Members of the House were entitled to accompany the Speaker to the palace and to appear with him before the King. But it is now usual, in the case of the reply to the speech from the throne to have the address presented by two members of the Government belonging to the royal household.

There are, in addition to addresses, other less ceremonious modes of making communications to the Crown, namely, messages which members of the House belonging to

[1] See *supra*, pp. 59 *sqq.*

[2] In recent times it has become customary for a Ministry to which the elections have given a fatal blow to resign without waiting for the procedure of an amendment to the address.

the royal household are desired to lay before the Crown; such messages are sometimes sent on special occasions, such as royal marriages or deaths. The answers to such messages are brought to the knowledge of the House by members.

8. Adjournments and Urgency Motions[1]

We have already, in connection with the opening and closing of the parliamentary session, discussed the rules concerning adjournment as one of the necessary arrangements in any system of parliamentary law: we have now to return to adjournment in another sense. A motion for adjournment may be used as one of the expedients of parliamentary tactics, and it is then referred to as a "dilatory" motion, one meant to cause delay. As we have seen, the right to move at any time that the House shall adjourn is one of the fundamental rights of a representative assembly, essential to its life, and one never to be called in question. So far as concerns the freedom of the House to dispose of its work and its time as it thinks best its right to adjourn has never been assailed. But we have also seen that the formal moving of the adjournment of the House as a tactical method of introducing new matter into the day's work has during the nineteenth century been gradually but steadily discouraged by the rules of the House. The new principle of fixity in the day's programme, which has continually gained strength, is diametrically opposed to the old principle of freedom of debate secured by motions for adjournment, and, as we have learnt, the more modern principle has proved the stronger. Without again tracing the course of the struggle we will content ourselves with stating the result.

The proposal of a formal motion for adjournment may come about in one of two ways: it may be moved during the discussion of some subject, and be either for adjournment of the House or for adjournment of the debate which is in progress; or it may be moved before the House takes up the work appearing on its programme. Under the

[1] Standing Order 10; *Manual*, pp. 61–64.

present rules there is not much opportunity for interruptin the discussion on the merits of a question by a formal motion for adjournment. Standing Order 22 contains the following provisions on the subject :—

When a motion is made for the adjournment of a debate, or of the House during any debate, or that the chairman of a committee do report progress, or do leave the chair, the debate thereupon shall be confined to the matter of such motion; and no member, having moved or seconded any such motion, shall be entitled to move, or second, any similar motion during the same debate.

And Standing Order 23 adds :

If Mr. Speaker, or the chairman of a committee of the whole House, shall be of opinion that a motion for the adjournment of a debate, or of the House during any debate, or that the chairman do report progress, or do leave the chair, is an abuse of the rules of the House, he may forthwith put the question thereupon from the Chair, or he may decline to propose the question thereupon to the House.[1]

It is obvious that these provisions completely put an end to the plan of using formal motions for adjournment as a means of obstruction. On the other hand, it is quite clear that the House of Commons cannot entirely dispense with motions for adjournment or some equivalent method of obtaining an immediate debate on some subject outside the prearranged scheme of work. When, therefore, reform was decided upon the simplest plan, that which would cause the least disturbance, appeared to be to allow the introduction of an extraneous subject at one point only in the programme, namely, before the House took up the orders of the day. But even a limitation to a single point seemed an insufficient protection to the main principle of the new rules, the fixity of the daily programme. As a further precaution, the right of members to move the adjournment of the House for the purpose of discussing the merits of some particular question, though not entirely abolished, was seriously curtailed : it was reduced to a right to propose an *urgency motion*. Such motions are therefore quite modern institutions in the House of Commons. They became both possible and necessary when the precedence given by the old procedure to notices of motion over orders of the day was done away with and the new fixed

[1] For an instance of the application of this rule by the Speaker in 1887 see *Hansard* (311), 1647.

arrangement of the work of the House adopted, and when, further, the House determined to abolish the former unrestricted power of every member to move the adjournment of the House before the beginning of the regular day's work and so to obtain a debate and division upon any subject which he wished to bring forward. As it was not possible to deprive members of all opportunity of ousting the subjects arranged for discussion, by bringing forward other matters of great importance, the form by which such special questions could be technically raised on a motion for adjournment had to be preserved in certain cases.[1]

By the present rules such a motion for adjournment can only be permitted in cases of special urgency under the following provisions, and upon the following terms :— An urgency motion can only be made upon written notice to the Speaker given at the beginning of the afternoon sitting, at the end of the time devoted to questions and before the orders of the day or notices of motion have been entered upon.[2] The application must exactly fit the formula : to ask leave to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance ; upon which must follow the statement of the matter referred to, *e.g.*, "the issue of an order sanctioning the immigration of Chinese labourers into the Transvaal."

The request for leave must, as a rule, be supported by forty members ; but if more than ten though less than forty members support it, the House may, upon a vote taken forthwith, give leave to move. In either case the motion is allowed to be made : but it does not come on at once ; it

[1] The old practice by which a formal motion for adjournment could be used before the commencement of business, to bring in a fresh subject for debate arising upon an answer to a question was aptly referred to by the Speaker in the Session of 1879 : "As the House is aware, every member of this House has the privilege of moving the adjournment of the House at the time of Questions ; but I am bound to say, that if the privilege of moving the adjournment of the House, when a member is not satisfied with the answer which he receives, should become a practice, that privilege will have to be restrained by the House." (*Hansard* (247), 697.)

[2] See the Supplementary Chapter for the alterations made in 1906 to adapt the rules about urgency motions to the altered time-table then adopted.

stands over to the evening sitting on the same day, and thus becomes itself an item in the day's programme.

The motion, however well supported, is bound to be of an *urgent* character. The practice of the last twenty years has fixed upon the requisite of urgency and interpreted the right to move in a restrictive sense.[1] It is true that the urgency of the matter which forms the occasion for the motion is not taken too literally; it is enough that the mover considers his subject to be urgent, and is able to give it a plausible appearance of urgency, provided always that the nature of the subject is not of such a kind as plainly to make such a description an abuse of language. Nevertheless, the Speaker has repeatedly refused to allow a member to move the adjournment of the House on the ground that the matter proposed to be brought up by him was obviously not important or not urgent. He has no general power of suppressing motions for adjournment: his authority only extends to preventing an abuse of the rule by refusing to accept a motion which he considers improper. On the whole the Speaker's practice in exercising his discretion has leant towards favouring the minority; he has never forgotten that the opportunity of moving the adjournment is an indispensable expedient of party tactics now only available in a much weaker form than in earlier days. But a series of rulings have absolutely excluded a large number of subjects from being used for the occasion of urgency motions for adjournment. In the first place, nothing can be brought up on such a motion which is forbidden by the general rules of debate; for instance, any question already discussed during the session, or any matter which is pending before a court of law. Again, all questions and subjects which have already been placed upon the order book of the House are protected from anticipation by a motion for adjournment. Questions of order or privilege, questions relating to the debates of the House, reflections upon the conduct of the persons specially protected against

[1] The requisite of "definiteness" is strictly interpreted by the Speaker; an instance of his interposition to insist upon this quality may be found in *Hansard* (319), 95.

censure without notice, are none of them available as foundations for a motion for adjournment. Further, a matter which has once been brought before the House as a question of urgency cannot be revived for a second time. And lastly, what blunts the weapon of urgency motions more than any other rule, *not more than one* such motion can be made at any one sitting. As a matter of fact, as statistics show, the use made of motions for adjournment in the House of Commons is very moderate. Any attempt to turn them into engines of obstruction would be met at once by the Speaker's absolute refusal to allow them to be moved.[1]

9. Bills

Having taken a survey of all the simple forms of procedure, we can now make a few explanatory remarks upon the form into which all the legislative work of Parliament is thrown—that of bills. By a bill we are to understand a legislative project generally divided into several clauses or at times into parts and clauses. It is unnecessary to dilate upon the extreme elasticity which such a form must possess in order to be able to adapt itself to the countless

[1] The following table gives a summary of the application of urgent motions for adjournment from 1882, when the standing order was adopted, down to 1903:—

Year.	No. of Urgency Motions.	Defeated on Division.	Rejected by the Speaker.	Withdrawn.	Passed.
1882 - -	4	2	1	1	—
1883 - -	5	2	1	2	—
1884 - -	9	6	—	3	—
1885 - -	4	1	2	1	—
1886 (1st session) -	3	1	—	2	—
1886 (2nd session) -	1	1	—	—	—
1887 - -	11	7	2	1	1
1888 - -	10	7	—	3	—
1889 - -	7	6	—	1	—
1890 - -	6	5	—	1	—
1891 - -	5	3	1	1	—
1892 - -	3	1	—	2	—
1893-4 - -	20	18	—	2	—
1894 - -	5	4	1	—	—

In the years from 1895 to 1903 there were respectively 2, 6, 7, 5, 5, 6, 9, 14 and 3 urgency motions, the greater part of which were rejected upon a division. In 1904 there were seven such motions.

subjects which Parliament may have to undertake. There is nothing to be gained for a theory of parliamentary form by attempting even an approximate classification of the immense range of subjects which parliamentary work has to reduce into the shape of bills. All we have to do is to endeavour to make a careful analysis of the *form*.

A bill is composed of a series of constituent parts, some of which are essential, some optional. Among the essential parts, now, as ever, is the *title*. In the older period of legislation, down to the early years of the nineteenth century, there was at the beginning of most bills another part; the introduction or *preamble*, in which the principal reasons for the enactment were set forth. For public bills there is now no need to have a preamble, and the use of one is looked upon as unpractical. In its place there is sometimes prefixed to the text of a bill a short statement called a *memorandum*, which corresponds, though not very closely, to the statement of motives often annexed to Continental legislative projects. But such a memorandum is no part of the text of the bill, and is not intended to be included in the resulting statute, as the title and preamble, if any, would be.[1]

A bill has often two titles, one complete and one known as the *short title*.[2] The second serves as a convenient name for the law, and is very often placed in the first clause. The first describes the law and its relation to previous legislation; but in addition it has great importance to a bill from the point of view of procedure. The rules of business have never treated the title as a casual or unimportant matter; they have always given to it a special significance in the discussion of the bill. It has always been regarded as a settled principle that the provisions and powers

[1] This has the important result that both title and preamble may be taken into consideration when a judicial construction has to be put upon a statute. It is therefore proper to move amendments to the title of a bill when it is being discussed before Parliament. See *Ilbert*, "Legislative Methods and Forms," p. 269.

[2] By special enactments, the two Short Titles Acts of 1892 and 1896 (55 & 56 Vict. c. 10, and 59 & 60 Vict. c. 14), short titles were provided for all statutes passed since the union with Scotland, which were still in force and had not already been given short titles.

contained in a bill must all be logically covered by the description given by the title. If some of them go beyond it, and the excess is pointed out by a member, the bill must be withdrawn. Further, it is requisite that all amendments and instructions which are proposed must also fit into the framework provided by the title. There are, then, two considerations to be borne in mind in drawing up the title of a bill: it should be wide enough to allow the proposer of the bill to include all the matter he wishes to bring forward; and it should not be so vague as to give easy opportunities for irrelevant amendments, with their consequent delays.

At present, the preamble having been dropped, the text of a bill begins at once with the formula of enactment, the *enacting words* by which the completion of the legislative process is testified. The formula is invariable:—

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of of the same, as follows."[1]

The text of a modern bill is usually elaborately articulated. For instance, the important scheme embodied in the Local Government Bill of 1893 was divided into five parts, each of the parts being again sub-divided under separate headings, the bill being altogether composed of eighty-three clauses. The clauses themselves are often still further divided into sub-sections. The technical drafting of bills for Parliament is specially intended to suit the method of parliamentary discussion and to give the widest scope to amendments without disturbance to the wording of the draft generally.

[1] The formula for money bills expresses the different attitude of the Crown; it runs: "We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto your Majesty the several duties hereinafter mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted," &c. (as before). If there is a preamble, the enacting words sometimes are "be it *therefore* enacted," &c. See *Anson*, "Law and Custom of the Constitution," vol. ii., p. 275.

Many bills have one or more appendices at the end, called *schedules*, containing detailed provisions for working out the principles laid down in certain clauses: and they usually contain also a summary of the effect which the bill is intended to produce on prior legislation, a list being given of all acts or clauses which it is proposed and intended to repeal. The bill above referred to (the Local Government Bill of 1893) proposed to repeal, either wholly or partially, no less than forty-five earlier acts of parliament.

Almost all bills contain, either at the beginning or at the end, clauses in which the technical expressions used in the bill are defined, and particulars are given as to the part of the kingdom where it is to be put in force and as to the time when it is to begin to take effect. To a German jurist this is one of the most remarkable features of English legislation, but it is not a mere matter of technical detail; it is bound up with the whole nature of an English act of parliament. The aim in drawing up such a document is to take the matter which has to be dealt with and to analyse it as much as possible into its elements: hence the text of an act of parliament at times carries detailed arrangement to the point of casuistry: by so doing it is hoped to restrict in advance, as far as possible, all discretionary exercise of the portion of public authority regulated by the new statute. Any student of English legal history will know how much scope, in spite of all precautions, is left to the acute and independent interpretation of the judges. It is necessary to remember that the nature of a "formal law" in England, the whole

[1] To take an example, the London Government Act of 1899 provides in the last clause but one (s. 34) as follows: In this Act, unless the context otherwise requires, the expression "administrative vestry" means a vestry having the powers of a vestry elected for a parish specified in Schedule A. to the Metropolis Management Act, 1855; and the expression "elective vestry" means any vestry elected under the Metropolis Management Act, 1855; the expression "rateable value" shall include the value of Government property upon which a contribution in lieu of rates is paid; the expressions "powers," "duties," "property," "liabilities," and "powers, duties and liabilities" have respectively the same meanings as in the Local Government Act, 1888; the expression "adoptive Acts" means the Baths and Washhouses Act, 1846 to 1896, the Burial Acts, 1852 to 1885, and the Public Libraries Acts, 1892 and 1893, &c.

notion of the scheme of an enactment, is totally different from what prevails upon the Continent. "If the contents of the public statute book are analysed it will be found that the proportion of its enactments which alter rules or principles of the common law is very small, and that the object of by far the greater part of them is to make some alteration in the administrative machinery of the country." [1] English legislation does not aspire to the establishment of far-reaching legal principles or the statement of great juristic dogmas : it contents itself with a ceaseless stream of administrative decrees and the construction of administrative arrangements, with satisfying varying social wants by countless legislative amendments of details in the existing law.[2]

The division of bills, according to their general character, into public and private bills is of the highest importance in procedure. The assignment of a bill to its appropriate division determines completely the form of procedure which is adopted, and the method in which it is discussed. In the arrangement of the text the only distinction is that a private bill is bound to have a preamble : further, a private bill must always be brought before the House by means of a petition.

As already stated, these two classes of bills comprise the two great directions in which the legislative action of Parliament is displayed : it may either be directed to the production of a *public general act*—that is to say, a law affecting the whole public, one which belongs to the *jus generale publicum* —or it may lay down, in the form of an act of parliament, some special rule affecting only a special section of the

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[1] *Ilbert*, "Legislative Methods and Forms," p. 239.

[2] Sir C. Ilbert, in the passage just indicated, gives a striking description of the problems which thus arise for an English lawgiver. "Among the questions which the framer of the proposed measure," he says, "will have to consider are: What powers and duties already exist for the purpose contemplated? By whom are they exercised or performed? What is the appropriate local authority? What is the appropriate central authority? What should be the relations between them? What kind and degree of interference with public or private rights, either by the local or the central authority, will be tolerated by public opinion? How is the money to be found? How is the change to be introduced so as to cause the least interference with existing rights and interests, the least friction with existing machinery?"

nation, what may be called *jus particulare*. We are only concerned here with the formal differences between public and private bills, and the manner in which the difference between them operates generally on procedure.[1]

There has never been a sharply drawn legal distinction between the two classes of bills. It must be sufficient to say that a private bill is one which is founded upon a petition from the person or persons in whose special interests Parliament is requested to lay down certain legal rules or to confer certain privileges, while a public bill is introduced into Parliament as a measure affecting the whole community, as a transaction in the life of the state, and originates with one or more members of the House. Speaking generally, therefore, the distinction rests upon the purely external difference between the manner in which bills of the two classes are brought before the House and the consequent difference in procedure. In practice, of course, in spite of the want of any precise technical distinction, it is generally very easy to say whether a bill ought to be treated as public or private.[2] There are necessarily bills which lie very close to the border line : they may be principally concerned with the regulation of private interests, but for some reason or other may have public importance and affect general interests : for such bills a third kind of procedure combining parts of both methods of treatment has been devised : we have therefore a third class of what are called *hybrid bills*. They are bills discussed both as private and as public bills.

The classification of bills just referred to must not be confused with the classification of acts of parliament appearing in the statute book. Since 1868 the statute book has distinguished three classes of laws :—(1) Public General Statutes ; (2) Local Acts ; (3) Private or Personal Acts. The

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[1] As to the number of public and private bills introduced into the House of Commons during the nineteenth century, see the statistical tables in the Appendix.

[2] In case of doubt the Speaker decides. See the statement made in 1902 (*Parliamentary Debates* (102), 974) : "The question whether a bill should be introduced as a public bill or a private bill is a matter for Mr. Speaker to decide and not for the House."

first class includes all Public Acts affecting England, Scotland, or Ireland, either separately or together, and Acts passed for the colonies. By a Local Act is meant any legislative provision affecting only some definite locality (town, parish, district). The third class, that of Private Acts, contains all such Acts as affect by means of legislative enactments the rights or status of individuals (Naturalisation Acts, Divorce Acts, &c.). In current phraseology, when Private Acts are spoken of it is generally those in the second class that are meant, to the exclusion of those in the third, which are technically entitled to the name. This happens all the more as the acts in the third class are not printed and published, and are not therefore assumed to be known by the courts of law without their attention being specially called to them.

Comparing the two classifications, we see that the first class of statutes is entirely subject to Public Bill procedure, and the last to that of Private Bills. The second class, besides including the overwhelming majority of the acts resulting from Private Bill legislation, contains a considerable number of laws introduced as Public Bills, for instance, all the Provisional Orders Confirmation Acts.[1] We see, then, that the two classifications do not exactly correspond.[2]

HISTORICAL NOTES

I—Parliamentary Forms

In no department of House of Commons procedure has so little change been made during the nineteenth century as in that of its elementary forms; motion, amendment, question and division are to be found as far back as the sixteenth century, and in the seventeenth their form was in all essentials precisely the same as at the present day. Such is the result of a study of the proceedings of the House as presented by the records in the journals and in the collections of D'Ewes; it is completely confirmed by the description which Scobell, a most accurate reporter, gives

[1] In case of opposition being made to these, they would be discussed as if they were private bills.

[2] See on this point the precise rules given in *Ilbert*, "Legislative Methods and Forms," pp. 26–35, and my remarks in *Grünhut's Zeitschrift für privates und öffentliches Recht*, vol. xxx., pp. 754 and 755. As to technical details in framing legislation, see *Bentham*, "Essay on Political Tactics"; chapter x., Of the drawing up of Laws.

of the practice of his day.[1] He informs us "when a motion hath been made the same may not be put to the question until it be debated, or at least have been seconded and prosecuted by one or more persons standing up in their places as aforesaid. . . . When a motion hath been made that matter must receive a determination by a question, or be laid aside by the general sense of the House before another be entertained."[2]

In old days the duty of framing the question was placed upon the Speaker. "It was the ancient practice," says Hatsell, "for the Speaker to collect the sense of the House from the debate, and from thence to form a question on which to take the opinion of the House."[3] And Scobell reports, "After some time spent in the debate, the Speaker, collecting the sense of the House upon the debate, is to reduce the same into a question, which he is to propound." But Hatsell goes on to tell us that in his day the practice had been long discontinued and that it had become usual for a member to put his motion into writing and deliver it to the Speaker.

The established rules as to amendments had been adopted by Scobell's time, "Without general consent no part of the question propounded may be laid aside or omitted; and although the general debates run against it, yet if any member before the question be put *without that part*, stand up and desire that such words or clause may stand in the question, before the main question is put, a question is to be put, whether those words or such clause shall stand in the question."[4]

In the sixteenth and seventeenth centuries amendments were often called provisos, tracing back their pedigree to the conditions, called by that name, by which the Crown had at times limited its assent to petitions. After the form of bills was evolved the commonest use of the word proviso was to describe an alteration made by the Lords to a bill sent up to them by the Commons. Such alterations by the Upper House were usually brought to the Commons in the form of "riders" attached to the bill.

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[1] By far the greater part of procedure in Queen Elizabeth's Parliaments was by way of bill. There were motions, too, upon which, as at present, great questions of policy were debated. For instance, we find, on the 6th of February 1563, "A motion was made by Mr. Winter that the House would have regard, by some bill, to the Navy." Again, in 1566, the question of the Queen's marriage was brought up by means of a motion (*D'Ewes*, p. 128). In the same session, "Paul Wentworth, by way of motion, desired to know whether the Queen's command and inhibition, that they should no longer dispute of the matter of succession, were not against the liberties and priviledges of the House" (*ibid.*). Other instances of motions may be found, *ibid.*, pp. 167 (1571), 220, 677, 685, &c.

[2] *Scobell*, p. 21. See *House of Commons Journals*, vol. i., p. 248, 28th June 1604); also (4th December 1640) "Ordered that, till the business in agitation be ended, no new motion of any new matter shall be made without leave of the House." Further: "Ordered that nothing to pass by order of the House without a question; and that no order without a question affirmative and negative." (1614: *House of Commons Journals*, vol. i., p. 464.)

[3] *Hatsell*, "Precedents," vol. ii., 3rd edn., p. 105; 4th edn., p. 112.

[4] *Scobell*, p. 22.

In Queen Elizabeth's time a distinction used to be drawn between *provisos*, in the strict sense of the word, *i.e.*, alterations operating by the insertion of new matter into a bill, and *amendments* proper, changes in the text.[1] Both provisos and amendments had then been long in use in the House of Commons.[2]

As to the process of putting the question and voting Scobell reports, "Every question is to be put first in the affirmative: *viz., as many as are of opinion that* (repeating the words of the question) *say Yea.* And then the negative thus: *As many as are of another opinion say No.* To which question every member ought to give his vote one way or other, and the Speaker is to declare his opinion, whether the *Yeas* or the *Noes* have it, which is to stand as the judgment of the House. But if any member before any new motion made shall stand up and declare that he doth believe the *Yeas* or *Noes* (as the case shall be) have it, contrary to the Speaker's opinion, then the Speaker is to give direction for the House to divide declaring whether the *Yeas* or the *Noes* are to go forth."[3]

The division was carried out by those who voted one way leaving the chamber and being counted on their return, while at the same time the strength of those who stayed behind was ascertained. The Speaker had to nominate two pairs of tellers, each of whom while officiating had a staff in his hand[4] (presumably for the purpose of scoring the numbers). The taking of a division seems at the end of the sixteenth century to have been looked upon as an unusual and important matter, though from parliament to parliament the number of instances steadily increased.[5] The method described seems to have been inconvenient to many of the members, and the question was repeatedly raised whether the *Ayes* or *Noes* ought to leave the House to be counted. In the old days the question was not without practical importance. For, as was once testified in the House, the party which had to go out was liable to lose votes, many members refusing to move out of their seats for fear of forfeiting them.[6] And it happened at times that attempts were made, when a division took place, to induce members to remain in the House at times even by the use of physical force.[7] These difficulties led to a definite principle being worked out for

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[1] See the interesting debate in Parliament in 1597, reported *D'Ewes*, pp. 575–577.

[2] Further particulars as to amendments will be given in the chapter upon bills, as the practice of amendment was really worked out in connection with legislative work.

[3] *Scobell*, p. 24.

[4] *Scobell*, p. 26.

[5] See *D'Ewes*, pp. 134, 573, 626, 662, 667, &c.

[6] *D'Ewes*, p. 675.

[7] An important division on a church question took place on the 13th March 1601, the votes being 106 to 105. A complaint was made that one of the members who, following his conscience, wished to go out with the "Noes," had been held back by another member. Sir Walter Raleigh said, "Why, if it please you, it is a small matter to pull one by the sleeve, for so have I done myself sometimes." On this there was a great tumult in the House. Some members wished to have Raleigh placed at the bar and Cecil had to soothe the House by a judicious speech. See *D'Ewes*, pp. 683, 684.

deciding which party was bound to go out. Scobell states the rule thus: "Upon the dividing of the House, those are to go forth who are for varying from or against the constant orders of the House (as that a question shall not be put, or not be now put, it being the course of the House, that after a debate the same should be determined by a question or the like) or against any positive order made by the House, or for the passing any new thing, as reading a petition or bill, and committing, ingrossing, or passing such bill, or the like."[1]

By Hatsell's time we find the principle elaborated to the finest detail by the help of an elaborate system of casuistry which he expounds. In the end he is bound to admit that he cannot always see rational grounds for making the Ayes go out at one time and the Noes at another.[2] For instance, he says, "That a petition be brought up" is a question introducing new matter, and therefore the Ayes go out; but if a motion is made that any member shall take the chair at a committee, inasmuch as every member is supposed to be proper and equal to the duty imposed upon him, those who are against any member, must go out, &c. The old procedure on divisions lasted until the building of the Westminster Palace in the nineteenth century, when the modern system was adopted. But in all other respects we find in Hatsell the present customary law already formed. He states the principle that it is the duty of every member who finds himself within the closed doors to vote; also the rule that if any person by mistake votes in opposition to his true intention his outward conduct binds his vote.

II—The Majority Principle

A subject of great importance in the history of Law arises in connection with the external matters to which we have just been directing our attention. The whole procedure of voting and division depends, according to the most ancient testimonies which the authorities give, upon an unquestioned assumption that the "judgment of the House" is to be learnt by ascertaining the majority as shown by a vote. The question may now be asked: When did this notion first prevail? From what period has it been a self-understood and inviolable principle that the will of the majority of the House of Commons represents the will of the whole body and consequently the will of the country? If a German teacher of constitutional law can say, "the history of the majority principle has not yet been written," he might have been referring to the special instance of its history in the House of Commons. The completeness with which the majority principle has been for centuries accepted is no greater than the obscurity of the origin of this basis of modern representative government, adopted, along with constitutionalism itself, in Europe, America and Australia, as the foundation of all parliamentary systems. In our

[1] *Scobell*, p. 24. This principle was, as early as 1597, described as being "according to the ancient former usage of the House" (*D'Ewes*, p. 573). See further, the order of the 10th December, 1640. "It was declared for a constant rule, that those, that give their votes for the preservation of the orders of the House, should stay in; and those, that give their votes otherwise, to the introducing of any new matter, or any alteration, should go out." (*House of Commons Journals*, vol. ii., p. 49).

[2] "Precedents," vol. ii., 3rd edn., p. 197; 4th edn., p. 207.

own time, when the importance of protection for minorities is being increasingly recognised, it is a matter of special interest to obtain clear ideas as to the nature of the majority principle; and it might *a priori* be expected that the native land of Parliament could give some clue to its rise.[1]

As we shall see directly, the acceptance of the principle that a majority decides came comparatively early in the history of the House of Commons. This is the more remarkable by reason of the contrast with the rule in the oldest representative body known to the law and constitution of England, the jury, in which a decision by majority has never been adopted. Professor F. W. Maitland, in his masterly way, has shown definitely what the reasons were which, notwithstanding temporary fluctuations in the first stages of the development, led in early times to the establishment of the necessity for unanimity in a jury.[2] He points out as one of the causes that, from the first, the verdict of the *juratores* was regarded not merely as that of twelve men, that it contained a communal element, and was looked upon as "the verdict of a *pays*, a 'country,' a neighbourhood, a community;" further, that when the jury system was settling down men had not yet accepted the dogma that the voice of a majority binds the community. The English conception was founded on the Teutonic theory that the formation of a corporate will must always be unanimous because the minority gives way and *conforms its will to that of the majority*.[3]

Professor Gierke has discussed the question in the two sections of his "Genossenschaftsrecht," upon the theory of corporations in the Corpus Juris Civilis, and upon that which is found among the Canonists—two of the most admirable chapters in this great work of modern juristic investigation. He has there shown that in Roman Law the majority principle as a basis of corporate decision rested on a strict political foundation, and, further, that the canon law had developed the theory in a curiously spiritualised way, and so extinguished the traces which the older *jus canonicum* showed of the Teutonic idea of unanimity. The canon law invented the theory that *sanioritas* was required for corporate decisions, and linked it to the Roman doctrine, by contending that the act of a majority raised a presumption of *sanioritas*.[4] Professor Maitland has shown that these doctrines as to the admissibility of the decision of a majority were not wholly without influence upon the English county courts of the twelfth and thirteenth centuries.[5]

The idea suggests itself at once that the conception of the majority principle, thus provided by the canon law, may possibly have had some con-

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[1] A recent treatise on the history of the majority principle is that of *G. Jellinek*, "Das Recht der Minoritäten." Vienna, 1898.

[2] *Pollock and Maitland*, "History of English Law," vol. ii., pp. 621–626.

[3] Thus *Gierke* ("Deutsches Genossenschaftsrecht," vol. iii., p. 323) writes, "Although we can find in the older canon law traces of the notion that the majority principle was taken in the sense of Teutonic law (*i.e.*, only as a means by which to arrive at the requisite unanimity, through the duty of submission incumbent on the minority), the developed theory of the canonists makes the validity of the majority principle depend upon a legal fiction."

[4] *Gierke, ibid.*, vol. iii., pp. 152–157, 323–330.

[5] *Pollock and Maitland*, vol. i., p. 539.

stitutional effect in England owing to the influence of the Chancellor and other high officers. On searching the oldest authorities for information as to the application of the principle to constitutional matters we find the following facts.

The earliest document which can be cited is the "*Articuli Baronum*" of 1215, which formed the basis for *Magna Carta*. In the section dealing with the appointment of a committee of twenty-five barons for securing peace and liberties we read, "In omnibus autem, quae istis xxv baronibus committuntur exsequenda, si forte ipsi xxv praesentes fuerint et inter se super re aliqua discordaverint, vel aliqui ex eis vocati nolint vel nequeant interesse, ratum habebitur et firmum quod major pars ex eis providerit vel praeceperit, ac si omnes xxv in hoc consensissent."[1] In *Magna Carta* itself the corresponding passage reads, "In omnibus autem, quae istis viginti quinque baronibus committuntur exsequenda, si forte ipsi viginti quinque praesentes fuerint et inter se super re aliqua discordaverint, vel aliqui ex eis summoniti nolint vel nequeant interesse, ratum habeatur et firmum, quod major pars eorum, qui praesentes fuerint, providerit vel praeceperit, ac si omnes viginti quinque in hoc consensissent; et praedicti viginti quinque jurent quod omnia antedicta fideliter observabunt, et pro toto posse suo facient observari."[2] Characteristically, the contemporaneous documents as to elections contain no reference to decisions by majorities. Thus in the oldest town charters, those of Northampton and Lincoln (1200), we find, "Volumus etiam quod in eodem burgo per commune consilium villatae eligantur quattuor de legalioribus et discretioribus de burgo."[3] Neither then nor at any later date do the writs of summons for elections refer to any choice of representatives by the vote of a majority. On the other hand, we find in the "Provisions of Oxford," which, like the *Articuli Baronum*, were meant to settle the organisation of the power of government, an express recognition of the majority principle in the formation of a corporate decision. Under the head "Ceo jura le Chanceler de Engletere" they contain the following: "Ke il .... ne enselera dun .... ne de eschaetes, sanz le assentement del grant cunseil u de la *greinure partie*: ne ke il ne enselera ren ke seit encontre le ordinement, ke est fet et serra a fere par les vint et quatre, u par la *greinure partie*."[4] So also in the provision as to the election of the King's Council by the twenty-four barons: "E ces quatre unt poer a eslire le cunseil le rei, et quant il unt eslu, il les mustrunt as vint et quatre; et la u la greinure partie de ces assente, seit tenu." In the title "Des parlemenz, quanz serrunt tenuz" it is laid down as to the choice of the members of the council by the regency of twenty-four, "E serrunt cunfermez par les avant dit xxiv u par la greinore partie de els." Finally as to these councillors, "E si il ne poent tuz estre, ceo ke la greinure partie fra, serra ferm et estable."

This evidence makes it clear that decisions of the *magnum concilium* were arrived at by a majority long before representatives of towns and counties were regularly called to a *parliamentum* in union with the *magnum concilium*. The conclusion seems natural that this fundamental rule must have been transferred without force and without resistance from the older and superior organ of the state to the younger House of Com-

[1] *Stubbs*, "Select Charters," pp. 295, 296. [2] *Ibid.*, p. 305.
[3] *Ibid.*, p. 311. [4] *Ibid.*, p. 389.

mons. As has already been explained elsewhere, the appearance of regular opposition is a relatively late product of parliamentary development. The mediæval House of Commons showed little differentiation either socially or individually. In the ordinary course of things there would be no great difficulty in adhering to the Teutonic conception which represented all decisions of the corporate body as unanimous by reason of the minority giving way to the majority. As soon as we are able to follow the proceedings of the House in detail we find the majority principle old-established and uncontested, never again to be disputed. Thus Hooker says: "If the whole House or the more part do affirm and allow the bill, then the same is to be sent to the higher House."[1] And Sir Thomas Smith: "The more part of them that be present, only makes the consent or dissent." No doubt from the very first, the necessity of the acceptance of the principle of deciding by majorities was felt instinctively: it was not till a long development had taken place, and the nation had become politically differentiated, not until deep irreconcileable antagonisms had made their appearance, that it came to be recognised that even the majority principle depended upon certain conditions, and that in their absence its serious deficiencies come to light. Even in our own day we can find in the English parliamentary system traces of the old conception that decisions of a majority become, by the submission of the minority, unanimous declarations of the will of the House. Thus Mr. Gladstone during the debates on procedure reform in 1887 described as one of the chief causes of the difficulties in which the House was placed, the fact "that the individual member has not that degree of respect, that degree of veneration—I may almost say that degree of awe—for the general and manifest will of the House which in my early days . . . used to be universal."[2] One of the greatest English political theorists of the nineteenth century, Sir George Cornewall Lewis, himself a representative of classic parliamentary government, has aptly pointed out the analogy between a decision by the majority of a political body and a battle between the armies of two independent nations: the one is an appeal to physical force, the other is an appeal to moral force.[3] There must always ultimately be an element of domination in a corporate decision which places a legal compulsion upon the minority. It is this very ingredient of domination in the decisions and acts of volition of individuals, just as much as of aggregates of persons, which converts them into specifically political acts: only a feeble and cloistered state philosophy could ignore or deny this. But one of the chief aims of modern statesmanship is the framing of such constitutional arrangements as will convert the necessary domination as much as possible into an indirect act of the dominated, thus moulding the form of government of the nation to a shape in which it may truly be called self-government.

[1] *Mountmorres*, vol. i., p. 119.

[2] See *Hansard* (311), 1286.

[3] *Cornewall Lewis*, "The Influence of Authority in Matters of Opinion," p. 149.